Summaries of
Decisions
Volume 6
(1982)

Liquor Licence Appeal Tribunal

Ontario

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LIQUOR LICENCE APPEAL TRIBUNAL

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Summaries of Decisions

Volume 6 (1982)

Ontario

LIQUOR LICENCE APPEAL TRIBUNAL

SUMMARIES OF DECISIONS * - VOLUME 6

CITED 6 L.L.A.T.

* This volume contains summaries of, and in some instances full decisions and reasons given. If reference to the exact decision is desired application should be made to the Registrar.

Published pursuant to the Liquor Licence Act,
Statutes of Ontario, 1980, Chapter 244

LIQUOR LICENCE APPEAL TRIBUNAL

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382844 ONTARIO LIMITED
419748 ONTARIO LIMITED
[LICENSEE OF ARNOLD'S]

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD

TO SUSPEND A DINING LOUNGE LICENCE AND A LOUNGE LICENCE ISSUED TO 419748 ONTARIO LIMITED AND 382844 ONTARIO LIMITED

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. SHAND, MEMBER
GALE McAULEY, MEMBER

COUNSEL: JOHN M. MACAULAY, representing the Appellant

S. A. GRANNUM, representing the Liquor Licence Board

HEARING DATE: March 10th, 1982

REASONS FOR DECISION AND ORDER

382844 Ontario Limited and 419748 Ontario Limited are the Licensees and carry on business in partnership as "Arnold's", Ottawa, Ontario, having acquired the licensed premises in October, 1979, when the Dining Lounge and Lounge Licences (No. 090003) were transferred to them.

The officers and directors of 382844 Ontario Limited are John Randal Lanctot, Linda Kathleen Murphy and Robert Noel Lanctot; and the sole officer and director of 419748 Ontario Limited is John M. Macaulay.

The licences issued are in respect of a Dining Lounge located on the main floor comprised of two areas having seating capacities of 22 persons (Dining Lounge 1), and 90 persons (Dining Lounge 2), and a Lounge also located on the main floor having a capacity of 87 persons.

On the 18th day of August, 1981, the Liquor Licence Board issued a Notice of Proposal to revoke the liquor licences for the following reasons:

"6. The Board proposes, pursuant to Section 10(3), to REVOKE the liquor licences of the licence holders because the past conduct of the officers and directors of the licensee corporations affords reasonable grounds for belief that their business will not be carried on in accordance with law in that, contrary to Section 5, subsections (31) and (31A), the said officers and directors have failed to maintain books

and records that clearly and accurately set forth a daily record of all purchases and sales of food and liquor in the Dining Lounge;

7. On Thursday, June 26th, 1980, an investigator of the Board attended at the licensed premises and monitored the operation of the premises. Copy of the investigator's report dated July 3rd, 1980 is enclosed. Further, on July 16th, 1981, an investigator of the Board made a further monitoring of the operation of the premises. Copy of report dated July 21st, 1981 is enclosed;

8. On or about August 28th, 1980, the Board met with Mr. John Macaulay, an officer and director of one of the licensee corporations, and warned him that separate records must be maintained for Dining Lounges nos. 1 and 2 and that the establishment must conform to Ontario Regulation 1008/75, Section 6(5). Notwithstanding said warning, the licence holders have failed to maintain separate books and records setting out a clear and accurate account of the sales and purchases of food and liquor in the licensed premises;

9. Further, on the said date of July 16th, 1981, several patrons were observed leaving the premises carrying bottles of beer and patrons were consuming beer in the parking lot, contrary to Section 6(11) of the regulations under the Liquor Licence Act. The said officers and directors also permitted free liquor to be served to patrons who won a limbo contest, contrary to Section 20 (4b) of the regulations."

The relevant sections of the Liquor Licence Act and Regulations thereunder are

Liquor Licence Act, 1980, Section 10(3):

> "Subject to Section 11, the Board may refuse to renew or may suspend or revoke a licence issued under Section 6 for any reason that would disentitle the Licensee to a licence under Section 6 if he were an applicant or where the Licensee is in breach of a term or condition of the licence."

Ontario Regulation 1008/75, Section 5(31)

> "Except for a manufacturer, every holder of a licence shall keep books and records that fully and clearly set forth a daily record of all purchases, sales and

stocks of liquor and such records shall be provided to the Board for any period requested by the Board.

Ontario Regulation 1008/75, Section 5(31a)

> The holder of a licence for premises licensed as a Dining Lounge, dining room or entertainment lounge shall keep books and records that fully and clearly set forth a daily record of purchases and sales of food and such records shall be provided to the Board for any period requested by the Board".

A Hearing to consider its proposal was held by the Board on the 17th day of September, 1981, and continued on the 1st day of October, 1981, at which latter date the Board found that the Licensees had carried on activities in contravention of the Act and Regulations set forth in the Notice of Proposal dated the 18th day of August, 1981, and rendered the following decision and order:

> "...that the 'Dining Lounge' and 'Lounge' Licences issued in respect of this establishment be "SUSPENDED" effective at the opening hour on Monday, October 19th, 1981, and to continue until the opening hour on Monday November 16th, 1981. Moreover, following the suspension period, Members of the Board's Inspection staff will attend at the premises to ascertain whether or not the establishment is operating in accordance with Section 5(31) and (31a) of the Regulations under the Act."

As a result of this Decision the Licensees requested a Hearing before the Tribunal.

At the outset both Counsel agreed that the issue to be determined by the Tribunal was the allegation referred to in Paragraphs 6, 7 and 8 of the above Notice of Proposal that the Licensees had contravened Section 5, Subsections (31) and (31a) of the Regulations. Moreover Counsel for the Board agreed during the Hearing to forego the allegation contained in Paragraph 9 of the said Notice.

On Thursday, June 26th, 1980, the Board's Investigator, Kenneth E. Brooks, attended this establishment and remained on the premises some 8 or 9 hours. His evidence, also given at the Board Hearing and based on the results of his investigation, indicated that the food figures recorded for Dining Lounge 2 were, in his opinion, fictitious. His

observation was that very little, if any, food was being served. Furthermore there were no food sales recorded when he was present but when he turned his attention to an examination of the books and tapes, food sales were punched into the cash register. He further observed that there were two cash registers - one in Dining Lounge 1, which only gave a total figure including food and liquor sales, and the other in Dining Lounge 2, having two sets of keys, one for this Dining Lounge and the other for the Lounge. He indicated that the establishment's records were all lumped into one book, that many of the liquor sales from the Dining Lounges were being recorded in the total lounge sales, that all wine sales were recorded in the lounge when in fact they were being sold in the Dining Lounges, that the cash register tapes were all mixed up and filed in a cardboard box, and that the sales journal included all sales without a breakdown between the lounge and the Dining Lounges. As a result Investigator Brooks was unable to reconcile or determine any past sales of food or liquor as reported to the Board.

The Board's Investigator, Mrs. Elaine Earl, attended this establishment on Thursday, July 16th, and Friday, July 17th, 1981, and gave in detail her observations as to this operation, more particularly as they relate to the books and records. The evidence she presented to the Tribunal indicated that no books and records of this establishment were available nor located on the premises on the above dates. She was further advised that these documents were packed away at the Licensee's house.

The Board's Hearing of September 17th, 1981, was adjourned to the following October 1st, to enable the Licensee to produce for the above Investigator's examination the books and records including food/liquor ratio reports. These were then made available to her, and the results of her study of them formed the basis for her report to the Board dated September 29th, 1981, and contained in Exhibit 6 being the Record of Proceedings before the Board. Her findings disclosed among other items the following: - No tapes were available to substantiate figures on daily sales sheets - Daily Sales were not posted in a sales journal - No books and records showing disbursements were available - All wine sales were shown as being sold in the Lounge - 69% to 79% of all alcohol sales were rung-in as sales in the Lounge and yet all entertainment took place in the Dining Lounge which is about 1 1/2 times the square footage of the Lounge - The same cash register was used for both areas, Dining Lounge and Lounge.

Evidence was given by Mr. John Randal Lanctot, President of the Licensee 382844 Ontario Limited as to the adequacy of the present system of keeping the establishment's books and records, and the fact that now separate records are kept in compliance with the Regulations. At the commencement of the Tribunal Hearing, Counsel for the Licensee conceded that at the time of the Board's Investigator's attendance at this establishment the books and records were not on the premises, were not available to the Investigator, and the Board was not so advised. This was further confirmed by Mr. Lanctot.

Therefore, on the evidence submitted the Tribunal finds that at the time of the Board's monitoring of this establishment, the books and records were not provided to the Board's Investigator when so requested contrary to Section 5(31) and (31a). Furthermore it is a finding of the Tribunal that, when the books and records were subsequently provided, they did not fully and clearly set forth a daily record of all purchases and sales of liquor and food for the reasons indicated by the above evidence.

The Tribunal notes that the Board's Decision of October 1st, 1981, was based on the allegations contained in its Notice of Proposal of August 18th, 1981. This Notice included Paragraph 9 referring to a contravention of Section 6(11) of the Regulations, whereas Counsel for the Board at the Tribunal Hearing agreed to forego this particular allegation. In addition, in accordance with Exhibit 7 to this Hearing, being the Secretary's Minutes of the Board Hearing of October 1st, 1981, some reliance appears to have been placed by the Board on non-compliance by this Licensee of the food/liquor ratio; whereas the sole issue placed before the Tribunal was the availability and adequacy or not of the Licensee's books and records.

For the reasons stated herein and based on the findings of the Tribunal, the Tribunal alters the Decision of the Liquor Licence Board, dated the 1st day of October, 1981, and ORDERS that the 'Dining Lounge', and 'Lounge' Licences issued in respect of this establishment be 'SUSPENDED' for a period of twelve (12) business days, the dates of such period of suspension to be determined by the Liquor Licence Board.

Following the suspension period Members of the Board's Inspection staff will attend at these premises to ascertain whether or not the establishment is operating in accordance with Section 8, Subsection (35) and (36) of the Regulations under the Act. *

* Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court). The appeal had not been concluded at the time of this publication.

BRANTFORD HARLEQUIN RUGBY CLUB

REQUIREMENT FOR HEARING IN RESPECT OF THE DECISION OF THE LIQUOR LICENCE BOARD OF ONTARIO

TO ISSUE SPECIAL OCCASION PERMITS TO THE BRANTFORD HARLEQUIN RUGBY CLUB IN THE TOWNSHIP OF BRANTFORD

BY MR. & MRS. KURMIS, ET AL

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
BARBARA SHAND, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: MR. & MRS. KURMIS, the Appellants, and others appearing in person

PETER M. QUINLAN, representing the Brantford Harlequin Rugby Club

S.A. GRANNUM, representing the Liquor Licence Board

HEARING DATE: April 27th, 1982

RULING ON JURISDICTION OF TRIBUNAL AND STATUS TO REQUIRE A HEARING

The Liquor Licence Board issued a 'special occasion permit' in respect of the Brantford Harlequin Rugby Club for the 27th of June, 1981. As a result of letters and a petition (Exhibit 3 - Items 10 and 11) of complaint received in respect of the event, the Liquor Licence Board issued a Notice a Proposal to refuse to issue a 'special occasion permit' to the Club.

The Club requested a hearing of the Liquor Licence Board and the Board served a Notice of Hearing for the 10th of September, 1981 on the Secretary of the Club for a hearing for the 10th of September, 1981. The document headed Notice of Hearing is a formal one as set out in Item 7 of Exhibit 3. The Notice, after recital of the provisions of the Liquor Licence Act states:

> "AND TAKE NOTICE that the rules of procedure applicable to the Hearing are set forth in Part 1 of the Statutory Powers Procedure Act, 1971, Chapter 47

AND FURTHER TAKE NOTICE that upon your failure to attend at the aforesaid time and place, the Board may carry out its proposal.
You have the right to be represented by counsel at the Hearing."

By letter dated August 4th, 1981 (Exhibit 9) the Hearing Officer notified Mrs. Frances Kurmis and other complainants as follows:

"Re: Brantford Harlequin Rugby Club
Brantford, Ontario
Special Occasion Permits

Dear Sir:

Kindly be advised that a 'hearing' has been scheduled for Thursday, September 10, 1981 at 11:00 a.m. at the second floor, 55 Lakeshore Blvd. East, Toronto, Ontario. This 'hearing' is concerning the objection received on a Board proposal. You are invited to attend this 'hearing'. Please bring all interested persons with you."

On September 10th, 1981, a Board hearing was held attended by the Objectors.

On the 19th of October, 1981 the Board issued its Decision set out in Exhibit 3, Item 10.

Pursuant to section 10, subsection (1) of the Liquor Licence Act, R.S.O. 1980, Chapter 244, the Board REFUSES TO ISSUE SPECIAL OCCASION PERMITS to the Brantford Harlequin Rugby Club, Brantford, Ontario for the period commencing FRIDAY, SEPTEMBER 25th, 1981 and continuing until MONDAY, NOVEMBER 30th, 1981 inclusive, for the reasons stated on the said Notice of Proposal."

On November 2nd, 1981, a requirement for a hearing by the Tribunal was made by W. Zimmerman "on behalf of Mr. and Mrs. H. Kurmis, as well as other ratepayers"; pursuant to (now) section 14.

An Appointment for and Notice of Hearing (Exhibit 4) for April 27th, 1982 was served on the Club and on Mr. and Mrs. Kurmis et al by W. Zimmerman, counsel and the Liquor Licence Board, and a Notice was published as set out in Exhibit 5 in the newspaper.

At the commencement of the hearing, counsel for the Club submitted that "the Appellants (Mr. and Mrs. Kurmis, et al) have no status for the bringing of the appeal" and requested the Tribunal to so rule.

The rights of persons and the powers of the Tribunal must be found within the provisions of the Liquor Licence Act R.S.O. 1980, Chapter 244 as amended and the Regulation 581 passed pursuant thereto. Section 14 of the Act deals with a hearing by the Tribunal. Subsection (1) reads as follows:

> "Any party to a proceeding before the Board under section 12 who is aggrieved by the decison of the Board, may, within fifteen days after he is served with the decision of the Board, mail or deliver to the Board and the Tribunal a notice in writing requiring a hearing by the Tribunal."

No objection was made to the requirement having been made within the specified time. However, counsel for the Club refers the Tribunal to a determination of who is such a party to a proceeding before the Board within the meaning of section 14(1). Reference must be made to section 12 of the Act relating to the holding of a hearing by the Liquor Licence Board. Subsection (3) thereof reads as follows:

> "Every person upon whom notice of a hearing is served and any other person added by the Board is a party to the proceedings."

The question is whether the letter of August 4th, 1981 (Exhibit 9) to Mr. F. Kurmis is a Notice of hearing within the meaning of the subsection. There is a clear distinction between the formal Notice of Hearing (Exhibit 3, Item 7) and the letter (Exhibit 9). The letter is a mere notification of the hearing to a person who is interested in the matter. The Tribunal finds that the letter is not a notice of hearing within the meaning of section 12(3). It is a fact that no objector was added by the Board as a party to the proceedings. This power is able to be exercised by the Board before or after the hearing to be held. It was not exercised; indeed, there is no indication it was called upon to do so. Accordingly, the Tribunal finds that neither Mr. Kurmis nor any other objector is a party to a proceeding before the Board within the meaning of section 14.

Under section 14(5), the Tribunal has certain powers respecting parties to proceedings before it. The subsection reads.

> "The Board, the applicant or the holder of the licence or permit who has required the hearing, and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section."

Counsel for the Club has submitted that before the Tribunal can exercise this power set out in subsection 5, the hearing itself must be properly constituted. The Tribunal agrees.

The Tribunal finds that section 14(1) not having been complied with, the Tribunal is not empowered to hold a hearing in this matter.

MURPHY HOTEL ENTERPRISES LIMITED
[LICENSEE OF COMMODORE MOTOR HOTEL]

APPEAL FROM A DECISION OF
THE LIQUOR LICENCE BOARD

TO SUSPEND A LOUNGE LICENCE

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. SHAND, MEMBER
GALE McAULEY, MEMBER

COUNSEL: J. D. CUNNINGHAM, representing the Applicant

S. A. GRANNUN, representing the Liquor Licence Board

HEARING
DATE: March 18th, 1982

REASONS FOR DECISION AND ORDER

Murphy Hotel Enterprises Limited is the holder of Dining Lounge and Lounge Licences (No. 010433) for the premises located in the Commodore Motor Hotel, Kingston, Ontario, having acquired the liquor licences by way of transfer on August 16th, 1976.

The officers and directors of the corporate licensee are Kenneth Murphy, President, Patricia Murphy, Secretary, and Violet G. Murphy, Director.

The Licences issued are in respect of three areas in the basement of the establishment, being a Dining Lounge (No. 1) in the South West Section having a capacity of 65 persons, a Dining Lounge (No.2) in the North East Section being a games room and having a capacity of 57 persons, and a Lounge in the South East Section having a capacity of 245 persons.

On the 29th day of July, 1981, the Liquor Licence Board issued a Notice of Proposal to revoke the liquor licences for the following reasons:

"6. ...the past conduct of the officers and directors of the licence holder affords reasonable grounds for belief that its business will not be carried on in accordance with law, honesty and integrity for the following reasons:

a) At a hearing before the Board on December 20th, 1979, the lounge licence of the licence holder was suspended at the opening hour on Monday, December 24th, 1979 until the opening hour on Monday,

January 7th, 1980 as a result of a conviction of the licence holder in Provincial Court for failing to ensure that evidence as to the age of persons apparently under the age of 19 years was obtained prior to permitting such persons entry to the premises licensed as a lounge;

b) On June 25th, 1981, the licence holder was again convicted in Provincial Court of selling and supplying liquor to persons who were apparently under the age of 19 years, contrary to Section 45(2) of The Liquor Licence Act. The said conviction arose out of an occurrence on November 15th, 1980 when liquor was sold and supplied to one Steve SOO, born May 22nd, 1962 and to Terry McCULLOUGH, born December 25th, 1961."

A Hearing to consider its Proposal was held by the Board on the 5th day of November, 1981, at which the Board's Decision was reserved pending the outcome of the Court action then in progress. Subsequently on the 21st day of of December, 1981, the Board rendered the following decision: -

> "Inasmuch as both Mr. McCullough and Mr. Soo pleaded guilty to being unlawfully in a licensed premises, the "DECISION" of the Board is that there will be a six-day "SUSPENSION" of the Lounge Licence only, for the period commencing at the opening hour on MONDAY, JANUARY 4th, 1982, and continuing until the opening hour on MONDAY, JANUARY 11th, 1982."

As a result of this Decision, the licence holder requested a Hearing before the Tribunal.

On November 15th, 1980, Constable R.F. Elliott of the City of Kingston Police Force dressed in street clothes entered the establishment at approximately 8:30 p.m. and took a seat at the bar in the Main Lounge where he was observing any indication of under age persons in attendance. He then moved to a table just inside the Lounge next to Dining Lounge No. 2 (the Games Room) and next to a table of young people. Two

youths, Terry McCullough and Steve Soo entered the Lounge, eventually joined the above group, ordered from a waiter who attended them, paid for and were served bottles of beer. The Police Constable testified further that the waiter did not ask Soo to produce any form of identification, and that he recognized McCullough, whom he knew to be under age. Both had been known to the Police for some time, and in Constable Elliott's observation, both appeared to be under the legal age. At a signal from Constable Elliott, Constable P.M. Field, who also gave evidence, and another police constable, having entered the Lounge, proceeded to question Soo and McCullough as to age identification, as a result of which the latter pair were subsequently charged in Provincial Court under Section 45(5) of the Liquor Licence Act with entering and remaining on licensed premises while under the age of 19. Each of them pleaded quilty at trial and were convicted and fined. Copies of Certificates of Conviction are contained in Exhibit No. 6, Record of Proceedings before the Liquor Licence Board.

Mr. Kenneth Murphy, President and Principal Shareholder of the corporate licensee, the applicant in this hearing gave evidence in detail as to the operation of the establishment and the adequacy of the procedure and instructions given to his staff concerning identification cards and signs, and the screening of under age persons seeking admission.

On November 15th, 1980, the night in question, there was a large crowd of people on hand and Soo and McCullough attempted to enter the premises at the main entrance located on the north wall of Dining Lounge No. 1. They were denied access by the doorman because of their inability to produce proper identification. Later they entered through a fire exit located on the east wall of the building just inside the Games Room or Dining Lounge No. 2. A patron had opened the exit door (Exit #3) from the inside allowing them to enter and be seated in the Lounge. Mr. Murphy was himself located at the main entrance that evening and recalls the two youths being turned away initially by the doorman. Furthermore Mr. Murphy stated that Exit #3 has been a continual problem and if he could he would have it closed.

As a result of the above incident the Licensee, Murphy Hotel Enterprises Limited, was charged in Provincial Offences Court uner Section 45(2) of the Liquor Licence Act that it did on or about the 15th day of November, 1980, "commit the offence of being the holder of a Lounge Licence under the Liquor Licence Act of Ontario, did (sic) sell or supply liquor to Steve Soo and Terry McCullough, being persons who are apparently under the age of nineteen years". A conviction was

entered on June 25th, 1981, but on appeal the Provincial Judge set aside the trial verdict and ordered an acquittal. Having heard only the above evidence of Police Constable Elliott and the contradictory evidence of Soo and McCullough, who both maintained they had not ordered or received anything to drink nor had they been attended by a waiter, the Appellate Judge found "a total lack of evidence justifying a necessary inference that the alleged waiter was acting by delegation, direction or with the authority express or implied from the defendant-licensee, in selling or supplying liquor to apparently under aged patrons". The Appellate Judge further expressed his doubt that "an unsupported conclusion by a Crown witness can constitute even a prima facie case in that regard".

Counsel for the Board drew the Tribunal's attention to the distinction as to the onus of proof in a Criminal Court compared with that established in headings before the Liquor Licence Board and before this Tribunal. In Criminal Proceedings as above, the Court must be satisfied beyond a reasonable doubt that the alleged offence had occurred. In the above appeal the Provincial Judge was not so satisfied and therefore acquitted this licensee.

On the other hand, Mr. Grannum indicated that in Board and Tribunal Hearings the onus of proof is not the same, and the Board or Tribunal needs only to be satisfied that the offence complained of did occur - that Soo and McCullough were minors, that they gained entry to the premises, and that they were served beer.

On the evidence submitted to it the Tribunal agrees with Mr. Grannum's submission and finds as a fact that the above offence did occur.

In past Decisions the Tribunal has observed that the actual control of minors can only be at the licensed premises level. The role of control is imposed upon the licensee; the responsibility and the duty are that of the licensee. Licensees throughout Ontario must appreciate that the statutory provisions and regulations are to be met, and they must be aware that they bear an onerous responsibility. The Tribunal reiterates the principle that strict enforcement is basic to the regulation of the conduct of licensees as provided for in the Liquor Licence Act.

The further question to be determined is whether or not Mr. Murphy, under the above circumstances, did all that an ordinary prudent man would do in exercising reasonable diligence to prevent the entry and presence of minors, and so insure that the act prohibited did not occur. The Tribunal confirms the Decision of the Liquor Licence Board herein.

finds that he did not - he was present when Soo and McCullough were turned away at the main entrance - by his own admission he knew that Exit #3 had for some time posed a continual problem, and as a result ought to have been aware, either through his own knowledge or that of his employees that, if these young persons wanted to gain entry by any means (which was the case), they would in all likelihood attempt to do so at Exit #3. Fixed with this knowledge, the evidence shows he did nothing further, and the Tribunal finds that the particular circumstances which permitted Soo and McCullough to enter the premises could and should have been foreseen and avoided by an ordinary prudent man exercising reasonable diligence.

In summation, Counsel for the Applicant, Mr. Cunningham, invited the Tribunal to consider and follow its previous Decision of Bavarian Restaurant & Tavern, Volume 3 L.L.A.T. Summaries of Decision at page 16, which he maintained most closely resembled the above situation. In this case two young women appeared to police officers to be under age, but the waitress serving them, who had not requested identification testified that in her opinion they appeared over 19. The two women were subsequently charged and pleaded guilty, and the Licensee was charged under Section 45(2) of the Liquor Licence Act. The Provincial Court Judge who had the two women before him, ruled "the girls did not appear to be under 19" and dismissed the charge against the Licensee. Based on the Judge's finding and the fact that the Decision of the Board was based upon the allegation of the action of the Licensee contrary to Section 45(2) the Tribunal revoked the Board's Decision.

Section 45(2) of the Act reads as follows:- "No person shall sell or supply liquor to a person who is apparently under the age of nineteen years, and, in any prosecution for a contravention of this subsection, the justice shall determine from the appearance of such person and other relevant circumstances whether he is apparently under the age of nineteen years."

The Tribunal finds that the present situation, although containing many facts similar to the Bavarian case, is distinguishable due to the ruling made by the judge which formed the basis for the dismissal of the charge against the Licensee (Bavarian Restaurant & Tavern) and the subsequent Tribunal Decision. The Tribunal therefore is of the opinion that, based on the evidence presented at this Hearing, it is not bound by the Bavarian Decision.

Accordingly the Tribunal confirms the Decision of the Liquor Licence Board herein.

DONWOOD RESTAURANT LIMITED

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD

TO REFUSE TO ISSUE A DINING LOUNGE LICENCE

TRIBUNAL: JOHN ERICKSON, Q.C. VICE-CHAIRMAN AS CHAIRMAN
B. SHAND, MEMBER
KENNETH VANHAMME, MEMBER

COUNSEL: FREMONT M.C. BROWN representing the Applicant

S. A. GRANNUM representing the Liquor Licence Board

HEARING DATE: February 2, 1982

REASONS FOR DECISION AND ORDER

This is an appeal by Donwood Restaurant Limited from the decision of the Liquor Licence Board dated the 23rd day of July, 1981 wherein the Board refused to issue a Dining Lounge Licence to the Applicant. It is agreed by Mr. Grannum and Mr. Brown on behalf of the Board, the objectors and the Applicant that the only issue to be determined in this appeal falls within the meaning of Section 6 (1)(g) of the Act, which says as follows:

> "in the case of an application for a licence, the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located."

It has been put forward as a matter of consent that the Applicant complies in all other regards with respect to the issuance of the licence.

I would just like to re-emphasize, as the Tribunal has emphasized in the past, that the interpretation of Section 6 (1) is such that an Applicant is entitled to a licence unless one of the exceptions can be established to the satisfaction of the Board and the Tribunal at a hearing.

We have reviewed the evidence carefully and, in particular, the position put forward by the Board and by the objectors, and wish to refer to it briefly.

First, there is the resolution of the Borough of North York in which Counsel for the Borough disapproves of the issuance of this licence to this Applicant. The Tribunal has

indicated in the past that the weight to be attached to such a resolution will vary. Further in the past, at times the Tribunal has disregarded resolutions of Boroughs or municipalities or cities, as the case may be, depending on the circumstances of the resolution. In this particular situation a number of things are clear: first the Applicant, or at least the officers of the Applicant, were not invited to the meeting at which the Borough discussed this particular liquor licence application. Second it is also clear that certain parts of the administration of the Borough supported the granting of the application and, on the face of the resolution before us, we have no background or, in fact, none of the reasons as to why the Borough took the position it took. The Tribunal wishes to note as a matter of record for the purpose of this decision, that it has attached for those reasons very little weight to the resolution.

There is a letter from Mrs. Beattie which is filed with the material, Mrs. Beattie being president of the O'Connor Hills Ratepayers Association. Her evidence, by and large, was echoed by Mr. Siemens. We have the evidence of Mr. Siemens, the past president of the O'Connor Hills Ratepayers Association and the issue, or the difficulty, that faces the Tribunal is what weight should be given to the evidence of Mr. Siemens. Can it be properly stated or inferred that his evidence is, in fact, evidence of the public interest or needs and wishes of the public in the municipality in which the Donwood Restaurant Limited is located? Cross-examination of Mr. Siemens revealed a number of things. Firstly, the resolution of the ratepayers association is dated November of 1980 when, in fact, the application which is before the Tribunal was not submitted until February 1981. The Tribunal has some question as to the approach taken by the ratepayers association prior to any application being submitted and whether, in fact, it can be said that the ratepayers association properly directed its mind to the issue which the Tribunal has to face today. Secondly, cross-examination also revealed that the ratepayers association is directed to single family dwellings and not to those who reside in apartments and townhouses. In fact, Mr. Siemens fairly states that the ratepayers association would represent approximately fifty per cent of all of the people who live in townhouses, apartments and single family dwellings in the O'Connor Hills Ratepayers Association area. Further, it was indicated that out of 650 members of that particular ratepayers association only 23 people actually attended the meeting in November 1980.

It is the view of the Tribunal, on the basis of all of the evidence from Mr. Siemens and the written material that in fact it cannot be said that the O'Connor Hills Ratepayers Association for the purposes of this application in a hearing de novo represents the public interest.

We also have the evidence of Reverend J. Maisson who, in the opinion of the Tribunal, fairly and honestly stated not only his personal opinion but also what he indicated was the opinion of the Board of his church. The Tribunal has noted that evidence and has paid particular attention to it in its final decision.

For the purposes of this decision, and in order to properly advise all of the parties of the basis upon which the decision is made, the Tribunal emphasizes that the onus is on the board and the objectors to satisfy the Tribunal on balance that the granting of the application is not in the public interest having regard to the needs and wishes of the public as stated in Section 6(1)(g) of the Act. That onus must be satisfied at a hearing convened for that purpose. In other words, the weight to be attached to a previous decision would be minimal since the Tribunal is required to weigh the evidence adduced before it at each and every hearing it is required to conduct. To find otherwise would be to deny changes in attitude or perception in the public will.

The Tribunal, on the basis of all the evidence before it, is unable to come to the conclusion that the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located. Put another way, the Tribunal is not satisfied that the onus, which, is on the Board and the objectors, has been satisfied. That being the case, the Tribunal revokes the order of the Liquor Licence Board dated July 23rd, 1981 and directs the Liquor Licence Board to issue a Dining Lounge Licence to Donwood Restaurant Limited once the applicant has complied with the Act and the Regulations.

TRIOMPHE INC.
[LICENSEE OF THE DUKE OF GLOUCESTER RESTAURANT]

APPEAL FROM THE DECISION OF THE LIQUOR LICENCE BOARD

TO ATTACH A TERM AND CONDITION TO
THE DINING LOUNGE LICENCE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN
KENNETH VAN HAMME, MEMBER

COUNSEL: DOUGLAS SHANKS, representing the Licensee

S. A. GRANNUM, representing the Respondent

HEARING
DATE: November 16th, 1982

REASONS FOR DECISION AND ORDER

The Tribunal finds in respect of the operation of the licensed premises that there has been a breach of the Regulation in respect of the total receipts from the sale of food from and including the month of April 1981 to and including the month of September 1982.

Further in respect of the operation the Tribunal finds:

Firstly, it is a bona fide restaurant; the menu, the facilities, the service all indicate this.

Secondly, reasonable efforts and innovations have been and continue to be made to increase the food receipts.

Thirdly, success has been achieved with respect to meeting the requirements of Regulation Section 9 Subsection 6 for the months of October, and the first two weeks of November 1982.

The Tribunal finds that there has been allowed reasonable time to comply with the section, and there should be expected of the licensee rigorous future compliance with the section.

Accordingly, by virtue of the authority vested in it under the Section 14(3) of the Liquor Licence Act, the Liquor Licence Appeal Tribunal hereby alters the Order of the Board by

deleting "Monday August 2nd, 1982" and "The Board's ORDER shall continue in effect until the Licensee is directed to the contrary." and inserting in lieu of the first deletion "on the 19th day after the end of the second month hereafter that there is not met the requirement of Section 9 Subsection (6) of Regulation 581/80 under the Liquor Licence Act."

The said Term and Condition to attach until September 30th, 1983.

TRIOMPHE INC.
[LICENSEE OF THE DUKE OF KENT RESTAURANT]

APPEAL FROM THE DECISION OF THE LIQUOR LICENCE BOARD

TO ATTACH A TERM AND CONDITION TO
THE DINING LOUNGE LICENCE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN
KENNETH VAN HAMME, MEMBER

COUNSEL: DOUGLAS SHANKS, representing the Licensee

S. A. GRANNUM, representing the Respondent

HEARING
DATE: November 16th, 1982

REASONS FOR DECISION AND ORDER

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The said Term and Condition to attach until September 30th, 1983.

DAPRATT ENTERPRISES INCORPORATED
[LICENSEE OF 18 EAST RESTAURANT]

APPEAL FROM THE DECISION OF THE LIQUOR LICENCE BOARD

TO SUSPEND THE DINING LOUNGE LICENCE
AND PATIO DINING LOUNGE LICENCE

TRIBUNAL: JOHN YAREMKO Q.C., CHAIRMAN
BARBARA SHAND, MEMBER
G. McAULEY, MEMBER

COUNSEL: PETER MALONEY, representing the Applicant

S. A. GRANNUM, representing the Liquor Licence Board

HEARING
DATE: July 20th, 1982

REASONS FOR DECISION AND ORDER

By Notices of Proposal dated the 14th of December 1981 and February 1st, 1982, the Liquor Licence Board proposed "to suspend for a period of thirty (30) days, the liquor licences of the licensee corporation, as the past conduct of the officers and directors of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with law, honesty and integrity, in that:

(a) contrary to Section 8(16) of the Regulations the said officers and directors have permitted more persons on the licensed premises than the stated capacity.

(b) contrary to Section 9(13) of the Regulations the said officers and directors permitted liquor sold in a licensed premises to be taken from the licensed premises, and

(c) contrary to Section 9(22) of the Regulations failing to remove all evidence of the service and consumption of liquor in a licensed premises within one half hour after the sale of liquor ceases therein."

Based upon certain particulars as set out therein, after a hearing held on the 22nd of April 1982, the Board dealing with the above particulars, and others issued a decision

suspending the licence of the licensee for seven (7) days.

The Tribunal notes :

(i) that the capacity of the Dining Lounge Licence issued was limited originally to 92.

(ii) that the capacity of a Patio Licence issued on the 5th of July, 1981 was limited to 58.

(iii) that subsequently tentative approval has been given to the capacity of the Dining Lounge being 115 and that of the Patio Licence being 108.

The Tribunal finds that George F.W.Pratt and Adrian G. Davies, two officers and directors of the corporation did permit the following:

1. Liquor sold on the premises to be taken from the licensed premises on Sunday, May 10th, 1981 and on Sunday, August 2nd, 1981.

2. The capacity of the Dining Lounge and the Patio Lounge to be exceeded - in respect of the Dining Lounge on twelve occasions and in respect of the Patio Lounge on two occasions.

The Tribunal notes that in respect of nine of the occurrences, in (2) the licensee was convicted on 17 December 1981 and fines totalling $5,700.00 were imposed.

The Tribunal notes further that since the 31st of January, 1982 the date of the committal of the last offence the Regulations have been strictly complied with, and there has been no complaint, the licensee having taken the necessary steps to ensure non-reccurrence.

The Tribunal finds that the conduct of the said officers was in contravention of Section 8(16) and Section 9(13) of the Revised Regulations of Ontario 1980, and that such conduct affords reasonable grounds for belief that the business of the corporation will not be carried on in accordance with law, honesty and integrity.

It was submitted thoroughly by counsel that Regulation Section 8(16) is ultra vires. The Tribunal holds that pursuant to Section 39(a) of the Liquor Licence Act, The Lieutenant Governor in Council is empowered to make the said Regulations and thereby impose a Term and Condition on the licence.

It was submitted that since certain convictions have taken place Section 11(h) of the Constitution Act 1982 applies. That section reads in part as follows:

11. "Any person charged with an offence has the right

(h) .....if finally found guilty and punished for the offence, not to be tried or punished for it again;....."

The Tribunal is of the opinion that Section 11(h) is not applicable to the proceedings before the Board nor before this Tribunal. The licensee is not being tried again. The Tribunal is to deal with certain reasons forming the basis of administrative action to be taken. The Tribunal reiterates its position that there is power in the Board and in the Tribunal to take the administrative action of suspension of the licence. Such action is separate and apart from proceedings under any other Statute which provide for penalty for contravention of the law.

The question resolves itself as to what administrative action should be taken. It has been submitted that the suspension of one week would be harsh and that it would be ruinous, and put the licensee out of business.

The Tribunal has held that it will not set aside administrative action by the Board charged with regulating the licenced industry without a reason. The Tribunal finds no such reason in the present instance.

Indeed the Tribunal notes the following:

i. The officers of the licensee have been in the operation of a licensed business for some years.

ii. That not only was the original capacity of the Dining Lounge exceeded, in each instance the capacity ultimately set at 115 was exceeded. (On one occasion it was exceeded by 107) That not only was the Patio capacity exceeded, on the two occasions the capacity ultimately set at 108 was exceeded.

iii. That on two occasions after the convictions of the 17th of December 1981 the capacity of the Dining Lounge was exceeded.

Accordingly, by virtue of the authority vested in it under the Liquor Licence Act, the Liquor Licence Appeal Tribunal hereby confirms the Decision of the Board and Directs the Board to set the date for the commencement of the said period of suspension. *

* Note: The above deicision was appealed to the Supreme Court of Ontario (Divisional Court). The appeal was subsequently discontinued.

ASHOK MEHRA
[LICENSEE OF EXECUTIVE MOTOR HOTEL]

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD

TO SUSPEND THE DINING LOUNGE AND LOUNGE LICENCES

TRIBUNAL: JOHN YAREMKO, Q.C. CHAIRMAN
LACHLAN CATTANACH, Q.C., MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: ADI M. RAMAN, representing the Applicant (Licensee)

S. A. Grannum, representing the Liquor Licence Board

HEARING DATE: June 29, 1982

REASONS FOR DECISION AND ORDER

Ashok Mehra, the Appellant herein, is the licensee under Dining Lounge and Lounge Licences #010925, carrying on business as Executive Motor Hotel at 621 King Street West, Toronto, wherein the licensed premises are situate.

On the 18th day of May 1982, the Liquor Licence Board, after a hearing to consider a proposal of March 29th, 1982, suspended the licences herein for a period of 14 days.

The Tribunal finds, and indeed it is conceded, that on the 3rd of December 1981 after a trial, Ashok Mehra was convicted of knowingly permitting the premises of 621 King Street West, Room 224 to be used for the purposes of a common bawdy house, and sentenced to seven days in jail. The Tribunal finds further and indeed it is conceded that on the 18th day of February 1982, Ashok Mehra pleaded guilty to three counts of knowingly permitting the premises to be used for the purposes of a common bawdy house and was fined $500.00 on each count. The Tribunal finds that the licensee did commit the offenses forming the basis of the convictions.

The Tribunal finds that the past conduct of the licensee affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.

Representation has been made to the Tribunal regarding the extent of the suspension, and submission made that it be related to only one of the licences. The Tribunal finds no ground for varying the decision of the Board.

Accordingly, by virtue of the authority vested in it under the Liquor Licence Act, the Liquor Licence Appeal Tribunal hereby confirms the decision of the Liquor licence Board and directs the board to set the date for the commencement of the said period of suspension.

FRANK'S RESTAURANT

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD TO ISSUE A DINING LOUNGE LICENCE

BY CHARLES M. SHARPE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
LACHLAN CATTANACH, Q.C., MEMBER
BARBARA SHAND, MEMBER

COUNSEL: CHARLES M. SHARPE, appearing in person

GARY F. VALCOUR, representing Frank's Restaurant

S. A. GRANNUM, representing the Liquor Licence Board

DATE OF HEARING: May 18th, 1982

RULING ON STATUS TO REQUIRE HEARING AND JURISDICTION OF TRIBUNAL AND SPECIFICATION OF PARTY

Upon the commencement of this hearing, counsel for the Applicants for licence (hereinafter referred to as the Applicants) raised a preliminary objection directed to the issue of the standing of Charles M. Sharpe, and the issue of his status as a "party aggrieved" within the meaning of the Act and the common law in that behalf. He has submitted that the requirements of Section 14 (1) which sets out the provisions respecting the hearing by the Tribunal have not been met in that firstly, Sharpe was not a party to the proceeding before the Board (in this matter) and secondly, that Sharpe is not aggrieved by the decision of the Board. And accordingly that the Tribunal has no jurisdiction.

The rights of persons and the powers of the Tribunal must be found within the provisions of the Liquor Licence Act, Revised Statutes of Ontario 1980, c.244. Section 14 of the statute reads:

> "(1) Any party to a proceeding before the Board under Section 12 who is aggrieved by the decision of the Board may..... mail or deliver to the Board and the Tribunal, a notice in writing requiring a hearing by the Tribunal."

In deciding its jurisdiction the Tribunal must determine who is a party to a proceeding before the Board within the

meaning of Section 14(1). In that regard reference must be made to Section 12 of the Act respecting the holding of a hearing by the Liquor Licence Board where a requirement is made for a hearing upon the issuance of a Notice of Proposal to refuse. Subsection 3 of Section 12 reads:

> "Every person upon whom notice of a hearing is served and any other person added by the Board is a party to the proceeding."

The question is whether the letter of the 22nd of July, 1981 to Mr. Sharpe is a notice of hearing within the meaning of the subsection. The Tribunal has had an opportunity of commenting in this regard in an unreported decision (Brantford Harlequin Rugby Club issued on the 3rd of May, 1982). The Tribunal held that there was a clear distinction between the formal notice of hearing served upon on the Applicants and the letter which was served upon the person requesting the hearing. The letter was a mere notification of the hearing to a person who was interested in the matter. The Tribunal found that the letter is not a notice of hearing within the meaning of Section 12 (3). The Tribunal is relating its finding in that particular instance to that matter namely the issuance of a Special Occasion Permit. There is no direct evidence before the Tribunal whether or not the Board added Mr. Sharpe formally as a Party.

In this instance, reference can also be made to Subsection 5 where it is stated the Board "shall hold a hearing and give its decision and reasons therefor in writing to the parties to the proceedings". The Tribunal has before it the decision rendered by the Board and notes that a copy was sent to Mr. Sharpe, as it was to counsel for the Applicants. Accordingly the Tribunal finds that Mr. Sharpe was a party to the proceeding before the Board.

The second question is whether Sharpe is aggrieved by the decision of the Board. The Tribunal has made an interpretation of the word 'aggrieved' in re: Pros Restaurant. Counsel for the applicant has submitted that the phrase should be interpreted in a legal fashion to mean someone who is individually deprived of something or individually affected. The Tribunal does not agree. In reading all the provisions of the Act and in particular the provisions relating to actions by the Board, and in particular in respect of entitlement, the Tribunal notes that the exemption to entitlement in this matter is that which comes within the exception set out in Section 6 (1) paragraph (g). The Tribunal is of the opinion that anyone whose concepts of needs and wishes have been decided against is aggrieved; The Tribunal so found in Pros Restaurant where the

Tribunal found that since the decision of the Board was contrary to the submissions of the Appellant in that case, she and those on whose behalf she spoke were aggrieved by the decision, and they had a substantial interest in overturning the decision. Counsel for the Applicants has made a very forceful argument that such an interpretation is too broad. It is clear that if the Board had refused the licence the Applicants would have had the right to appeal and that Sharpe and others would have had to reiterate their expression of needs and wishes. The Tribunal is of the opinion that the legislature intended that there be an appeal - a hearing to be held by the Tribunal in such circumstances. The Tribunal finds that the legislature intended that the Tribunal provide a further opportunity for a review of a matter at the instance of the public via a member thereof and a redetermination of the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located in those instances where the Board has issued a Notice of Proposal to refuse and then decided to issue after a hearing.

Under Section 14 (5) the Tribunal has certain powers respecting Parties to proceedings before it. The section reads:

> "The Board, the applicant or the holder of the licence or permit who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section."

The Tribunal specifies Mr. Sharpe as a party to the proceedings before this Tribunal.

FRANK'S RESTAURANT

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD TO ISSUE A DINING LOUNGE LICENCE

BY CHARLES M. SHARPE.

TRIBUNAL: JOHN YAREMKO, CHAIRMAN
LACHLAN CATTANACH, Q.C., MEMBER
BARBARA SHAND, MEMBER

COUNSEL: CHARLES M. SHARPE, appearing in person

GARY F. VALCOUR, representing Frank's Restaurant

S. A. GRANNUM, representing the Liquor Licence Board

DATE OF HEARING: MAY 18, 1982

REASONS FOR DECISION AND ORDER

The Liquor Licence Act sets out the provisions respecting the issuance of liquor licences, with particular reference to Section 6 of the Act which reads in part as follows:

> "An Applicant for a licence is entitled to be issued the licence except where:....."

and following a number of exceptions set out in paragraphs (a) to (f), paragraph (g) reads as follows:

> "In the case of an application for a licence, the issuance of the licence is not in the the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located."

The public should have an awareness of the principle that underlies the issuance of licences under the terms of the Liquor Licence Act. It is not up to the Applicant to show that he should be issued a licence. Under the Act, he is entitled to a licence except where the exceptions (a) to (g) apply. In this instance there is to be considered the exception to entitlement set out in paragraph (g) whether the issuance of

the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located.

It is a matter of judgement for the Board to determine what is in the public interest and the basis of this is a regard to the needs and wishes of the public in the municipality. This determination is not an easy one. It is exactly the same judgement and determination which has to be made by the Tribunal; it does not get easier on appeal.

The legislation provides that the public interest must be determined in the light of two aspects. First, regard must be had to both needs and wishes. Consideration must be given to both factors. Second, these aspects must be examined in the context of the public of the municipality in which the premises is located. In this instance, on the evidence and material placed before the Tribunal, the public represented is basically close to and surrounding the site. Although there is an influx of summer residents, the bulk of the evidence has emanated from those who live in contact with or adjacent to the site of the premises.

There is no scientific machinery for the Board or for the Tribunal to arrive at a conclusion. The conclusions are based on the material which is placed before it, consisting of letters, of petitions, of oral testimony. There is also the reciting of what is excluded in other proceedings, hearsay evidence, for we have permitted witnesses to testify as to what others with whom they have had conversations with felt about and expressed with respect to their needs and wishes. The Board and the Tribunal in this instance has to examine in its totality the material placed before it. The Tribunal is very much aware of the weaknesses that exist in the total evidence, especially in petitions signed by people. In this instance, the Tribunal on a perusal of the letters and petitions notes the location of the people who have expressed their views and that a very substantial number have a direct relationship to the municipality in which the premises are located.

The Appellant Sharpe has expressed a point of view very strongly and very well. He has expressed what he believes to be his needs and wishes and of others and he has expressed the basis for the views. The witness Dobson has expressed a great many concerns about what might happen, what could happen. The Board accepts as bona fide the views and concerns of Sharpe and Dobson and indirectly of those for whom Sharpe was authorized to speak. It is not up to the Tribunal to decide whether traffic conditions are bad or whether they will worsen; the

Tribunal is to be concerned with the expression of needs and wishes by members of the public. If those needs and wishes are bona fide the Tribunal accepts them as being that expression.

The legislation has provided for that expression of views. The Tribunal earlier made a ruling with respect to the status of the Appellant under the Act and whether it is in August 1981, or whether it is in May 1982, the Appellant, under the legislation is entitled to the opportunity of expressing views, and of course having these views balanced with the views of others who come forth to express contrary views, Today we have heard what is to be accepted as a bona fide difference of opinion. Members of the public who have known each other through many years have come to different conclusions with respect to concerns, with respect to needs, with respect to wishes. We have the testimony of persons who would be as much affected by the concerns expressed by the Appellant, because the conditions which would prevail will affect both supporters and objectors. Again there is a difference of opinion. Some even feel that the issuance of a licence will be an improvement to conditions which have existed in the past. Indeed one supporter of the application who expressed a need and wish in support, pointed out a significant fact: if the Applicants were to remove a structure at the corner there would be a vast improvement in conditions at that corner. The Tribunal feels that the Applicants for licence will take that suggestion very seriously in order to have conditions over the long run of which the community will approve.

The needs and wishes of persons, a substantial number who live side by side with the objectors have been expressed very strongly in favour. One of the supporters said "why should I have to drive to Port Perry to have a drink? Why should I be compelled to drink and drive when within the community I would be able to walk to the restaurant?" In the ordinary course the Tribunal had occasion only to make a passing reference to a vote that has taken place with respect to the authority of the Board to issue licences. In this instance we have something that can be considered more than just a vote. The nature of the vote is such that it took place within the community that would basically be affected by the issuance of the licence. The people of Cartwright Township that became part of Scugog Township, must have been aware when they were voting (in that overwhelming number) that the licence if approved would have to be issued either in Caesarea or in Blackstock, and that it would be extremely unlikely to be in respect of premises situate in some rural area where it is very unlikely that even zoning exists that would permit that. The Tribunal is assisted in its judgement by virtue of the circumstances of this particular vote.

Since the Applicant is entitled to a licence under the Act there is an onus on the objector, the Appellant, to prove that the issuance is not in the public interest. It is not up to the Applicant to prove that it is in the public interest that a licence be issued. On balance on all the material that is before it, the Tribunal has come to the conclusion that the onus has not been satisfied by the Appellant and those who support his position.

Accordingly, by Virtue of the authority vested in it under the Liquor Licence Act, the Liquor Licence Appeal Tribunal hereby confirms the decision of the Liquor Licence Board dated September 2nd, 1981.

JOANNE SOFRAS
[LICENSEE OF G & G RESTAURANT]

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD

TO SUSPEND THE DINING LOUNGE LICENCE

TRIBUNAL: JOHN ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
GALE McAULEY, MEMBER
KENNETH VANHAMME, MEMBER

COUNSEL: DAVID M. ROVAN, representing the Applicant

S.A. GRANNUM, representing the Liquor Licence Board

HEARING DATE: December 2nd, 1981

REASONS FOR DECISION AND ORDER

This is an appeal from the decision of the Liquor Licence Board dated September 10th, 1981 wherein it proposed to suspend the Dining Lounge Licence issued to Joanne Sofras, Licensee, Licence Number 020684 (G & G Restaurant) located at 881 Bloor Street West, in the City of Toronto.

The evidence called by the Board through Constable Keith Cowling of the Metro Toronto Police Department indicates that on the early morning hours of Sunday, April 5th, 1981 he attended with Richard Czata who also is a Police Constable with the Metro Toronto Police Force at the premises known as G & G Restaurant. The time was approximately 2:00 o'clock in the morning. Constable Cowling indicates that he could see some 8 male persons sitting around a table inside the restaurant with glasses on the table in front of them. He says he formed the opinion that they were in all liklihood consuming alcohol at that time. Constable Cowling indicates that he banged on the door and demanded that it be opened. The licensee according to the evidence of the Constable was busy removing several glasses from the table and at one point attended at the front window to look out at the officers. While the glasses were removed, Constable Cowling indicates that someone also had thrown a metal dish under the table and he subsequently discovered that there were ice cubes on the floor. Constable Cowling also indicates that he looked at the glasses which were placed in the sink in the restaurant and smelled a strong smell of liquor coming from the sink and the glasses. It was the Constable's

evidence that there was a significant delay from the time the demand was originally made to enter the premises until they were actually allowed to enter and during that period of time he and his partner were able to view the individuals inside attempting to dispose of the glasses which the Constable felt contained liquor.

Inspector Wilk was also called by the Board and he indicated that he had been an Inspector in the area where the G & G Restaurant is located for some three years. He described Mr. and Mrs. Sofras as hardworking individuals who were always present in the premises. He indicated further that the clientele was mostly older people and he had not had any difficulties with the licensees. Further evidence was introduced by Mr. Grannum which indicated that Mr. Sofras was convicted on the 5th day of April, 1981 of a breach of Section 6(20) of the Regulations to the Liquor License Act and was fined $100.00. That section deals with the necessity of removing signs of service and consumption in a licensed premises. Mr. Sofras gave evidence and indicated that at the time police arrived at his premises he was closed. He states that some of the people who were sitting at the table that night were friends of his and that at the time the police arrived he states there were no glasses on the table and accordingly there was no liquor on the table. Mr. Sofras also in his evidence indicated that in his view it would be impossible for the police to see what they purported to see from the front window and in that regard referred to a sketch and some photographs which were filed as exhibits. Mr. Sofras indicated that contrary to the evidence of Constable Cowling he did not remove any glasses and did not see anyone else remove any glasses. He did agree that there was a delay of time in admitting the Police Officers to the premises.

The Tribunal upon a review of all of the evidence prefers the evidence of Constable Cowling of the Metropolitan Police Department. The Constable had had no previous experience with the licensee so was unfamiliar with the licensee or the licensee's premises. The Constable indicated in a clear and cogent manner the things which he observed. Mr. Sofras on the other hand was at times evasive and vague as to what transpired during the evening in question. The Tribunal therefore accepts the evidence of Constable Cowling. That being the case, the Tribunal finds that there was in fact a breach of the Regulations and more particularly Section 6(2) of the Regulations to the Act. Pursuant to Section 11(3) of the Act, the Tribunal is empowered to revoke the licence of a licensee for any reason under Section 6 that would disentitle the licensee to a licence under Section 6 if the licensee were an applicant. The Tribunal finds that pursuant to Section

6(1e) of the Act the licensee is carrying on activities which are in contravention of the Act and the Regulations. The Tribunal has said on other occasions that it will not interfere with the imposition of penalty of the Board unless there is some clear reason to do so. The Tribunal finds that no such reason exists in this situation and confirms the Order of the Liquor Licence Board dated the 10th day of September, 1981 and orders that the suspension take effect at the opening hour of Monday, January 4th, 1982 and to continue until the opening hour on Thursday, January 7th, 1982.

(GEORGE DEMARS, APPLICANT)
GEORGE'S PLACE RESTAURANT

APPEAL FROM THE DECISION OF
THE LIQUOR LICENCE BOARD

TO REFUSE TO ISSUE A DINING LOUNGE LICENCE

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. SHAND, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: GEORGE DEMARS, appearing in person

S. A. GRANNUM, representing the Liquor Licence Board

J. C. TAYLOR, Q.C., representing the Township of Tilbury West

HEARING DATE: September 15th, 1982

REASONS FOR DECISION AND ORDER

The Applicant is the owner and proprietor of a restaurant in the Village of Comber, in the Township of Tilbury West, County of Essex.

By Notice of Proposal dated the 19th day of May, 1982, the Liquor Licence Board proposed, pursuant to Section 10 (1) of the Liquor Licence Act, to refuse to issue a dining lounge licence to the Applicant because:

(a) the issuance of a licence is not in the public interest, having regard to the needs and wishes of the public in the municipality in which the premises is located.

(b) the past conduct of the Applicant affords reasonable grounds for belief that its business will not be carried on in accordance with law.

Based on certain particulars as set out therein, after a hearing held on the 6th day of July, 1982, the Board dealing with this application issued a decision that the application for a "dining lounge" licence be refused.

The Liquor Licence Act sets out the provisions for the issuance of liquor licences, with particular reference to Section 6 of the Act which reads in part as follows:

> "An applicant for a licence is entitled to be issued the licence except where....."

and two of the exceptions as set out in paragraphs (d) and (g) are as follows:

> "(d) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.
>
> (g) in the case of an application for a licence, the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located."

Dealing first with the question of whether or not the issuance of the licence is in the public interest, the application was opposed by the Corporation of the Township of Tilbury West, in which municipality the premises is located. Evidence was given before the Tribunal by Jack Morris, the Reeve of the Township, who was authorized by the Council of the municipality to oppose the application. He stated in his evidence that residents within 400 feet of the restaurant were notified of the application for the liquor licence and that the vast majority of these residents were opposed to the application. He stated that these premises had been granted Special Occasion Permits on various occasions and that he and other members of Council had received many complaints. He also stated that there was a parking problem at times when Special Occasion Permits had been issued and that the Applicant had not made any attempt to apply for a re-zoning of his property to permit the development of a commercial parking lot on the premises.

Mr. Don McMillan, the Clerk of the Township of Tilbury West, and the Secretary-Treasurer of the Police Village of Comber, confirmed that he had sent out notices of the original application for a dining lounge licence to 66 properties lying within 400 feet of the restaurant premises. He stated that there had been no letters in support of the application, but

that one person had appeared in support of the application at the original Council meeting dealing with the matter and four persons had appeared in support of the application at a second Council meeting. He stated that he had received various complaints from citizens by telephone calls and that their main complaints dealt with the noise and the conduct of the patrons at the time of Special Occasion Permits.

The Reverend George Edward Cox, the Minister of St. Andrew's United Church in Comber, appeared on the instructions of his Board of Elders to oppose the application. He stated that his congegation consisted of about 140 families within the limits of the Village of Comber and the surrounding rural area. St. Andrew's United Church is located diagonally across the road from the restaurant premises. Reverend Cox stated that when the restaurant was originally opened, he patronized it on several occasions on Sunday after church, but there had been a change in the character of the restaurant when a portion of the restaurant had been set aside for games machines. Reverend Cox also stated that at times when the premises were being used with Special Occasion Permits the surrounding area was very cluttered from a parking point of view.

Mr. George Demars, the Applicant, stated in his support of the application that he felt there were many people in town prepared to support the application and he filed a further petition in support of the application containing about 60 names. He suggested that there was no serious parking problem in the area and that he had had no major complaints with respect to parking.

The only witness called by the Applicant in support of the application was a Mr. Orville Robert Taylor who stated that he enjoyed the use of the premises and felt that the licence should be issued. He stated that he lived at 14 James Street, about two and one-half blocks away from the restaurant.

There was filed before the Tribunal additional correspondence which had been left in the municipal office, consisting of three letters, all opposed to the application. The Tribunal also took note of the various petitions filed in support of and in opposition to the application on the original hearing before the Liquor Licence Board.

The legislation provides that the public interest must be determined in the light of two aspects. Regard must be had to both needs and wishes and consideration must be given to both factors. These aspects must then be examined in the context of

the public of the municipality in which the premises is located. The Tribunal must base its conclusions on the material which is placed before it consisting of all evidence, letters and petitions. The Tribunal notes in the evidence given by Reeve Morris that he had checked the petition filed by the Applicant and that over half of the persons who signed the petition were not from the area of the Village of Comber.

Since the Applicant is prima facie entitled to a licence under the Liquor Licence Act, there is an onus on the objectors to prove that the issuance of a licence is not in the public interest. It is not up to the Applicant to prove that it is in the public interest that a licence be issued. However, upon weighing the evidence placed before it, the Tribunal has come to the conclusion that the onus has been satisfied by the persons opposing the application.

In dealing with the second grounds for the Board refusing the licence, namely, the past conduct of the Applicant, Counsel for the Board called James McEachern, a liquor investigator for the Liquor Licence Board, who wrote and submitted the report of April 6th, 1982 filed with the Tribunal. Mr. McEachern in his evidence stated that a Special Occasion Permit had been issued on April 2nd, 1982 by virtue of an application made by Larry Santos for the Essex County Pony Pull and that the permit issued allowed the sale of four forty-ounce bottles of liquor and five cases of beer in the said premises. Mr. McEachern states that when he entered the restaurant as a patron he was never asked whether he was a member or guest of the Essex County Pony Pull, but was served beer merely as a patron of the restaurant. In his evidence, he noted that there were 26 bottles of liquor on the bar in the premises, which bar was being operated by the Applicant. Mr. McEachern stated in evidence that the Applicant was charged with keeping liquor for sale without the authority of a licence or permit under Section 4 (1) of the Liquor Licence Act and was also charged with the sale of liquor without the authority of a licence or a permit, and the Tribunal finds that the Applicant was convicted on both charges and paid a fine of $200.00 on each count. Mr. McEachern in his evidence also stated that the daughter of the Applicant was charged with forging the signature of Larry Santos on the application for the Special Occasion Permit on April 2nd, 1982, and that she pleaded guilty and was fined $250.00.

Mr. McEachern stated in evidence that an examination of the records of the Liquor Licence Board indicated 13 applications for Special Occasion Permits for the period from March 7th, 1982 to April 4th, 1982, all of which applications had been

submitted on behalf of the Essex County Pony Pull, but that in conversation with the secretary of the Essex County Pony Pull he was advised that they only required approximately three Special Occasion Permits per year. He also stated that there was no record of Larry Santos being a member of the Essex County Pony Pull Club.

The Applicant in cross-examination was asked what the Special Occasion Permits were required for and he stated that they were social events. He went on to state that "if you get a bunch of guys together, there was always something to talk about". He stated that one of the reasons for a permit was that if somebody had a birthday, he bought a cake and had a party for him.

The Tribunal notes that the offences which occurred on April 2nd, 1982 did, in fact, occur while the application for a dining lounge licence was being processed; the said application having been submitted on February 24th, 1982.

Upon the basis of all the evidence before it, the Tribunal has come to the conclusion that the past conduct of the Applicant does afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity.

Accordingly, BY VIRTUE OF THE AUTHORITY vested in it under the Liquor Licence Act, the Liquor Licence Appeal Tribunal hereby confirms the decision of the Liquor Licence Board dated July 6th, 1982.

ROGER A. MINER
[LICENSEE OF THE NATION HOTEL]

APPEAL FROM A DECISION OF
THE LIQUOR LICENCE BOARD

TO SUSPEND A DINING LOUNGE
LICENCE AND LOUNGE LICENCE

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA SHAND, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: WILLIAM T. McINENLY, representing the Applicant

S.A. GRANNUM, representing the Liquor Licence Board

HEARING
DATE: November 9th, 1982

REASONS FOR DECISION AND ORDER

Roger A. Miner is the Licensee under Dining Lounge and Lounge Licences No. 010143 carrying on business as the Nation Hotel at Casselman, Ontario where the licenced premises are situate.

The licences were issued to the Licensee in February of 1977 and he has operated the business since that date.

The premises licenced as a dining lounge is located on the main floor of the establishment, consisting of two areas having capacities of 85 and 30 persons, respectively, and a lounge area also located on the main floor having a capacity of 48 persons.

On November 9, 1981, the Liquor Licence Board issued a Notice of Proposal "to suspend for a period of 30 days the liquor licences of the Licence Holder because past conduct of the Licence Holder affords reasonable grounds for belief that business will not be carried on in accordance with the law, in that contrary to Section 45(2) the Licence Holder did on April 10, 1981 supply liquor to persons apparently under the age of 19 years". The particulars of the Notice of Proposal listed 13 persons apparently under the age of 19 years who were present in the licenced premises on the said date and were consuming liquor thst had been supplied to them by the Licensee and his employees.

The Applicant and a waitress, Madeliene Bazinet, were both charged and convicted of supplying liquor to a minor contrary to the provisions of Section 45(2) of the Liquor Licence Act.

The evidence of the Ontario Provincial Police Officers who conducted the investigation and raid on April 10, 1981 resulting in the charges against the 13 underage drinkers was that all of the persons charged were sitting in the dining lounge area of the licenced premises. There were approximately 60 persons in the dining lounge and most of these persons were checked, resulting in the 13 charges being laid against the underage drinkers. The evidence before the Tribunal was that one of the underage drinkers was Alain Bazinet, the son of the waitress Madeliene Bazinet, who was convicted under Section 45(2) of the Liquor Licence Act.

Roger Forbes, an Inspector with the Liquor Licence Board, gave evidence that he was familiar with the Nation Hotel and had inspected it on many occasions. He had been advised by the Ontario Provincial Police of the occurrence on April 10, 1981, but he had not been present at that time. It appears that the Applicant had originally provided a disco rock band for entertainment and that it had been attracting a younger type of patron, but had since been discontinued because it was attracting minors and had now been replaced with entertainment consisting of "go go dancers" in the dining lounge. Mr. Forbes stated that he had made approximately five or six visits to the premises since April of 1981 and had been on the lookout for minors, and there had been no complaints since April of 1981 When he was in attendance at the premises, the waiters were checking for minors and appeared to be taking adequate precautions.

The Licensee, Roger A. Miner, gave evidence on his own behalf and advised that he had been the proprietor of the Nation Hotel for the past six years. He had had no previous convictions under the Liquor Licence Act. He stated that on the evening of April 10 there were approximately 75 patrons in the dining lounge and about 45 patrons in the lounge, and he confirmed that there were no minors in the lounge. Mr. Miner stated that he was in charge in the lounge and that Mrs. Bazinet and another waitress were responsible for the dining lounge.

Under cross-examination, Mr. Miner confirmed that underage persons were entitled to be in the dining lounge for food only.

There is no dispute on the evidence before the Tribunal and the Tribunal finds that because of the past conduct of the Licensee, there are reasonable grounds for belief that his business will not be carried on in accordance with the law. The question to be decided is one of penalty.

Mr. Grannum for the Board argued that the Licensee is responsible for the management of the premises and must ensure that he has competent persons in charge of the premises at all times. He referred the Tribunal to Section 55(2) of the Liquor Licence Act which provides for a minimum suspension of seven days and that in view of the number of underage persons served on the premises, the decision of the Liquor Licence Board to suspend the licence for the premises for a period of 28 days should not be interfered with.

Mr. McInenly argued for the Licensee that this was a first offence, but argued that the suspension should be limited to the dining lounge since all of the infractions took place there. He argued that there was no inference that if an incident contrary to the Act occurred in one area of licenced premises, all of the licences should be suspended. Mr. McInenly also argued that the length of the suspension was not justified and that the suspension be limited to the dining lounge for a period of seven days.

The Tribunal is of the opinion that the length of the suspension is justified in that the number of underage persons served liquor shows a lack of proper management supervision on the part of the Licensee. However, since all of the offences occurred only in the area of the dining lounge and the premises for which the lounge licence was issued were not affected, the Tribunal is of the opinion that the suspension should only apply to the dining lounge.

Accordingly, by virtue of the authority vested in it under the Liquor Licence Act, the Tribunal hereby confirms the decision of the Liquor Licence Board dated the 7th day of January, 1982 with respect to the suspension of the dining lounge licence in the premises known as the Nation Hotel, Casselman, Ontario, for a period of 28 days and directs the Board to set the date of commencement of the suspension. The Tribunal revokes the Board's Order of Suspension of January 7, 1982 with respect to the lounge licence issued for the said premises.

NEW VILLAGE RESTAURANT HAMILTON LIMITED
[LICENSEE OF NEW VILLAGE RESTAURANT]

APPEAL FROM A DECISION OF THE
LIQUOR LICENCE BOARD

TO REFUSE TO ISSUE LOUNGE LICENCE

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA SHAND, MEMBER
GALE McAULEY, MEMBER

COUNSEL: ANTHONY WELLENREITER, Q.C., representing the Appellant

S. A. GRANNUM, representing the Liquor Licence Board

HEARING
DATE: December 8, 1981

REASONS FOR DECISION AND ORDER

The Appellant and Applicant for the above Licence, New Village Restaurant Hamilton, Limited, is a corporation and the owner of premises known as 988 King Street West, Hamilton, Ontario, where the Applicant operates a restaurant business known as the New Village Restaurant. The corporation has operated the establishment since January 1st, 1974, and the shareholders of the corporation are John C. Mouskos, President, and Helen Mouskos, his wife, Secretary-Treasurer.

The business is located on the main floor of the above building which was purchased by the Applicant on October 30th, 1980, and has a capacity of 75 persons. The Application proposes hours of operation for the sale and service of liquor to be 12:00 noon to 9:00 P.M. Monday to Saturday with the restaurant being closed on Sunday.

Notice of the Application was published in the Hamilton Spectator Newspaper on March 25th and April 1st, 1981, and a public meeting concerning the application was held in Hamilton on April 9th, 1981. Prior to the public meeting, the Board received a number of letters of objection to the issuance of the Licence from residents of the municipality, including the alderman in the area together with petitions signed by several residents opposing the Licence. At the public meeting a number of persons appeared and spoke in favour of and in opposition to the granting of the Licence.

As a result of this public meeting, on April 27th, 1981, the Liquor Licence Board issued a Notice of Proposal "to refuse to issue a Dining Lounge Licence to the Applicant because it is not in the public interest, having regard to the needs and wishes of the residents in the municipality in which the premises is located." The Applicant then requested a Board Hearing which was held in Hamilton on June 4th, 1981.

Filed with the Board was a petition in favour of the issuance of the Licence containing the signatures of 469 persons, and 3 persons carrying on business in the immediate area wrote letters to the Board favouring the issuance of the Licence. There was also filed with the Board a petition with signatures of 125 persons opposing the issuance, together with several letters from persons in opposition.

The following is an extract from the Decision of the Board dated July 13, 1981:

> "At the Hearing, several persons gave evidence both in favour of the granting of the Licence and also in opposition to the granting of the Licence. None of those who opposed the issuance of the Licence had any complaints against the operators of the restaurant or the sale of food therein. The main concerns of the objectors are that there is inadequate parking in the area, that other restaurants and premises in the area will make application for a liquor licence if a licence is granted to the Applicant, that there has been a large increase in the number of children who are now residing in the area, and that there are a sufficient number of licensed premises in the immediate area to serve the needs and wishes of the community.
>
> Those persons who were in favour of the issuance of the Licence to the Applicant praised the Applicant's operation of the premises and were of the opinion that they should be able to partake of alcoholic beverages in the Applicant's restaurant without the necessity of going elsewhere for this purpose.
>
> The Board finds that there are other licensed premises in the immediate vicinity which meet the needs and wishes of the public in the municipality, and that the concerns of those who are opposed to the issuance of the Licence are bona fide concerns and the Board therefore FINDS that it is NOT IN THE PUBLIC INTEREST THAT A LIQUOR LICENCE BE GRANTED TO THE APPLICANT."

As a result of this Decision the Applicant requested a Hearing before the Tribunal.

At the Tribunal Hearing, Counsel for the Applicant and for the Board submitted statements indicating agreement as to the facts, the relevant parts of which may be summarized as follows:

Since the purchase of the land and premises on October 30th, 1980, for $130,000.00, the Applicant has expended some $50,000.00 to improve the restaurant facilities and the overall building.

This establishment is located in the western part of the City of Hamilton, known as Westdale, the business and shopping centre of which is an oval area where the commercial and business enterprises are situated. The New Village Restaurant is located on the eastern end of the oval and in the vicinity of seven other restaurants, most of the latter being specialty fast-food, or take-out restaurant operations.

In addition, the other businesses in the immediate area are numerous and varied, including drug, flower, clothing, fashion, travel, gift, shoe, pet and variety shops, professional, bank and trust company offices, a theatre, a public library, and other such facilities common to a commmercial area.

Westdale is known more as a walking community and many of the business patrons walk to and from the stores, shopping and business provided in the oval area. Local rather than through traffic is predominant.

Parking facilities are comprised of a parking lot accommodating some 54 cars, street parking on both sides (some 57 metered spaces), together with the public library lot, office building lot, and the adjoining side streets.

There are four licensed establishment locations within ten blocks of the New Village Restaurant, the closest being six blocks away. Schools (3) and churches (4) are in the area, varying from one block to seven blocks distant from the Applicant's business.

The evidence at the Tribunal Hearing consisted of not only letters and petitions, both supporting and in opposition to the Application, but also the attendance and oral testimony given by some 38 witnesses, the majority (32) of whom, being mainly residents and business people, were in favour of a Licence being granted.

A review of the evidence in favour of issuance indicates strong support, not only from residents in close proximity to the establishment, but also from a number of proprietors of the business community, many church representatives in the Westdale area, most of these people being regular patrons of the New Village Restaurant. Particularly stressed by this evidence were assertions that this has been, and will be, essentially a family-type restaurant, there is no severe parking problem in the area, and that the needs and wishes of the public in the area have been expressed by a wide cross-section of the public represented by the residential and business community in favour of issuance. In addition, Exhibit 11 to the Tribunal Hearing contains letters of support from a number of individuals and leaders in the community, who would also appear to be some of those in the Westdale area most affected by the granting of a Licence. The comments submitted include the following: - "The restaurant is conducted on a high level without the slightest degree of impropriety or moral laxity." - "It is my considered judgment that such a Licence would add to the enjoyment of many patrons of the restaurant and would not constitute a source of hazard or danger to the neighbourhood." - "I can see no good reason why they should not be granted such a Licence given the restrictions and high standards required by law for the operation of such an establishment." - "I know Mr. Mouskos personally and I have eaten in his restaurant on several occasions. He runs a respectable place of business and I am quite sure that many others feel like I do, it is a good place to eat. I am quite sure that many are very grateful for having a restaurant in the area. Being a licensed establishment will give the patrons even greater enjoyment and pleasure --- the reasons given and the objections put forth for refusing him a Licence are very weak." - "My children have been brought up in the area and so I can speak with considerable understanding of the nature of the area. I feel that the granting of such a Licence to Mr. Mouskos will not affect the area adversely." -"The New Village Restaurant is a real asset to Westdale and the community." - "As a business person in the area... I have never heard of any complaints about the adequacy of parking in the Westdale area."

The Tribunal heard in some detail evidence in opposition to issuance and considered carefully the views expressed by those in attendance at the Hearing and those represented by letters and petitions. There is no doubt as to the sincerity of those expressing concerns relative to their needs and wishes. They have stressed increased traffic, lack of adequate parking facilities, the residential character of the area, their opinion that there are now an adequate number of licensed establishments, and their concerns for the increasing number of children residing in Westdale. The bona fides of these views and concerns is not in question.

The issue before the Tribunal is the exception to entitlement referred to in Section 6(1)(g) of the Act. "Where the issuance is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located." It is matter of judgment initially for the Board and now for the Tribunal to determine what is 'in the public interest' in regard "to the needs and wishes" as expressed above, and this determination is a difficult one.

There is no established formula under the Act for a calculated determination of needs and wishes, and therefore the Tribunal can only proceed on the variety of material presented to it, in conjuction with that presented previously to the Board. This procedure is necessary to bring to the issue the maximum input of the public in the municipality. A mere count of names to arrive at a majority is nevertheless not the proper course for determining the issue for or against.

It is clear that the objection and opposition to the issuance of a liquor licence has, as one of its bases, concern over local traffic and parking problems. On this point the major portion of the evidence before the Tribunal indicates that no severe parking problem would be anticipated if a Licence was granted. The adequacy or inadequacy of available parking in the area, or the control of traffic, are the responsibilities of the municipality, and the Tribunal accepts the Applicant's position that Westdale is essentially a walking community.

The Tribunal notes again that, in determining under Section 6(1)(g) what is in the public interest, regard must be taken to both 'needs' and 'wishes', and weight must be given to each of these stipulations. Consideration cannot be limited to that of "needs" or "wishes" alone, nor to either of these matters from the point of view of any one particular group.

In the Tribunal's view there is clearly a need for this restaurant's facilities to provide its service to the large number of residents, patrons and business people comprising the public in the immediate area. The restaurant has rendered excellent service for the past eight years, and this is an indication that it has fulfilled a need as expressed by the clientele who patronize it.

The question resolves itself into a determination of whether the needs and wishes of those opposed (mainly immediate residents) to the issuance of the Licence should be considered as being either greater, or to be given more weight, than the needs and wishes of those who favour the issuance (residents, patrons and business people). The Liquor Licence Board in considering issuance or not must make a choice - a full Licence

or none at all. Quite clearly the Board emphasized the needs and wishes of the immediate residents to determine public interest and decided accordingly.

Under Section 15(4) of the Act, the Tribunal is empowered to attach Terms and Conditions to the issuance of a Licence, and is thus in a position to take a balanced point of view to give effect to the purposes of the Act.

Therefore the Tribunal finds that, in the public interest, a limited Licence should issue, incorporating a commitment given by the Applicant to limit its hours of operation.

The Liquor Licence Appeal Tribunal hereby revokes the Decision of the Liquor Licence Board dated the 13th day of July, 1981, and directs the Liquor Licence Board to process the present Application, and, provided that all remaining requirements of the Act and Regulations are satisfactorily met, to forthwith issue a Dining Lounge Licence to the Applicant subject to the following terms and conditions:

1. The hours of operation for the sale and service of alcoholic beverages will be 12:00 noon to 9:00 p.m. Monday to Saturday.

2. The licensed premises will be closed on Sunday.

3. No Application for a transfer of the Licence shall in the future be considered by the Board unless a proposed transferee agrees to comply with the above terms and conditions as to hours and closure.

KEUKENHOF LIMITED
[LICENSEE OF PARAGON RESTAURANT]

REQUIREMENT FOR HEARING IN RESPECT OF THE DECISION OF THE LIQUOR LICENCE BOARD OF ONTARIO

TO ISSUE A DINING LOUNGE LICENCE TO KEUKENHOF LIMITED

BY CERTAIN RESIDENTS OF OWEN SOUND

TRIBUNAL: JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA SHAND, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: J. DOUGLAS CRANE, Q.C., representing the citizens of Owen Sound

A.C.R. Whitten, representing Keukenhof Limited

S.A. GRANNUM, representing the Liquor Licence Board

HEARING DATE: April 20th and 21st, 1982

REASONS FOR DECISION AND ORDER

This is an Appeal by certain residents of Owen Sound, Ontario from a decision of the Liquor Licence Board dated October 28th, 1981. In that decision the Liquor Licence Board of Ontario granted a licence to Keukenhof Limited, a company which carries on business as PARAGON RESTAURANT.

It was agreed at the outset of the hearing that the only issue before the Tribunal was whether or not the issuance of a licence to the Applicant/Respondent was not in the public interest having regard to the needs and wishes of the public in the municipality where the premises are located, that is, Owen Sound, Ontario. The Tribunal has dealt with Section 6(1)(g) of the Liquor Licence Act on a previous occasion involving the same Applicant and issued that decision in September of 1980 at which time it refused a licence to the Applicant.

Mr. Crane, on behalf of the Citizens of Owen Sound, argued that the application for a licence should not be allowed to proceed initially in the year 1981 before the Liquor Licence Board and then in 1982 before the Tribunal when the same Applicant had been refused in 1980. As part of the material filed before the Tribunal, we were provided with a decision of

Mr. Justice Anderson of the Supreme Court of Ontario wherein he refused to grant relief to the citizens of Owen Sound under the Judicial Review Procedure Act, S.O. 1971, Chapter 48. We can only concur with His Lordship wherein he stated:

> "In my view, the scheme of the Act clearly gives to the Applicant for a licence, a right to apply notwithstanding a previous refusal."

It is the view of the Tribunal that any shortcoming in the legislation perceived by the citizens of Owen Sound must be left to the Ontario Legislature for redress.

Many witnesses were called by the parties to this Appeal over a two day period and all gave their evidence in a clear and forthright manner. For the citizens of Owen Sound, a number of witnesses testified as to the affect the granting of a licence would have on their neighbourhood and used examples of noise pollution, parking and an erosion of the quality of life that they wished to have in their residential area. It was clear, on the basis of all the evidence tendered by the citizens, that while the evidence was to some extent repetitive they all voiced their opposition to the licence application in a strong and meaningful way.

On behalf of the licence applicants, evidence was called which establishes beyond any doubt that Mr. and Mrs. Van Velden, the officers of the applicant, are capable, competent restaurant managers who have made a successfull living in their chosen profession. It is agreed that no issue as to their ability to manage or supervise a licensed establishment is raised by any of the evidence that was tendered.

The Tribunal does not feel it is useful to outline in point by point form the evidence of each of the witnesses given its repetitive nature and does express its regret to all of the parties involved with this particular application that this issue appears to have engendered adversity in the community. Unfortunately neighbours are against neighbours and one would have hoped that their problems could have been resolved without recourse to this Tribunal on two occasions. The Tribunal does indicate that in this decision it has not relied on or placed any weight or emphasis on the previous evidence heard in Owen Sound in June of 1980 other than to look at that decision in terms of the principles that were enunciated and to apply them to the evidence that was heard in Owen Sound on April 20th and 21st, 1982. The Tribunal came to its decision accordingly. The Tribunal hastens to add that it is agreed that the industry, the character, the managerial ability, the quality of service and

all other aspects of the supervision and operation of the Paragon Restaurant is unquestioned and the Tribunal is not unsympathetic to the Applicant's position. The Tribunal has, however, come to the conclusion that the Liquor Licence Board was incorrect in its decision. In particular the Tribunal has reviewed page 2 of the Liquor Licence Board's decision and the Tribunal does find that based on the evidence it heard in Owen Sound the view of the Liquor Licence Board that the prime concern to the citizens in opposition was inadequate parking is not supported. In fact, the main issue concerning the citizens in opposition is the quality of life issue which has been emphasized time and time again by counsel for those in opposition. It is their real concern on a bona fide basis that in a residential area the granting of a liquor licence or having a liquor licence is incompatible with proper residential zoning. In support of that view, the Tribunal has relied not only on the evidence of the residents who live in close proximity to the Paragon Restaurant but also on the evidence of Stephen Hyndman of the City Planning Department which in our view provides some form of corroboration. Stephen Hyndman, who was called as a witness on behalf of the Applicant for the Licence, gave evidence that in his view there was an incompatibility in having a liquor licence in this kind of residential area. It is our view that this is the very point that the citizens in opposition to the application were making in their evidence and have made in the past and the Applicant, Keukenhof Limited, by calling Mr. Hyndman, has in effect through its own evidence supported that proposition. In fact, Mr. Hyndman went further and stated that where there is a non-conforming use as in this situation efforts should be made to eliminate the non-conforming use over a period of time, not to perpetuate or expand it.

Additionally, in assessing the evidence adduced by Keukenhof Limited, the Tribunal is unable to accept on the basis of all of the evidence heard that there would be fewer overflow vehicles because of a permanent licence and this is a finding made on the basis of the evidence given by Mrs. Van Velden. She left the Tribunal with a clear impression that large groups would continue to frequent the establishment notwithstanding the granting of a licence and that in fact the expansion the Van Veldens are looking for is an expansion of the clientele using the diningroom in front of the building and not the special occasion rooms to the rear which are well utilized at the present time. In other words, the existing traffic problems would be exacerbated.

The Tribunal has said in the past in its decision involving Section 6(1)(g) of the Act that the belief of the citizenry must be bona fide as it relates to the issue of public interest. It is the Tribunal's finding that in fact the citizens of Owen Sound who oppose the granting of this licence do in fact have bona fide reasons for such opposition and the Tribunal so finds. It has also been indicated in the past that the onus is upon those opposing the granting of an application as one can determine by examining the provisions of the Act and in particular Section 6. The Tribunal has come to the conclusion that these citizens of Owen Sound in opposition have in fact established the onus of satisfying the Tribunal that the granting of the licence to the Paragon Restaurant is not in the public interest in accordance with the provisions of Section 6(1)(g).

The Tribunal having found that the weight of the evidence which was presented by those in opposition to the granting of the licence is such that the onus has been met and the Tribunal having satisfied itself that the needs and wishes of the community and the public interest will only be served if a licence is not granted to the Applicant in accordance with Section 6(1) of the Act, the Tribunal, therefore, revokes the decision of the Liquor Licence Board of Ontario dated October 28th, 1981 ad instructs the Board to refuse to issue a licence to the Applicant.

DECISION AD ORDER

BY VIRTUE OF THE AUTHORITY vested in it under the Liquor Licence Act, the Liquor Licence Appeal Tribunal hereby revokes the decision of the Liquor Licence Board dated the 28th day of October 1981 and directs the Board to refuse the issuance of the Dining Lounge Licence to the applicant.

MALACHY McGANN
DAVID McGANN
DANNY McGANN
[LICENSEES OF PIONEER HOTEL]

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD

TO SUSPEND THE LICENCE

TRIBUNAL: JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
J.C. SIM, MEMBER
BARBARA J. SHAND, MEMBER

COUNSEL: C. ANTHONY KEITH, representing the Appellant

S. A. Grannum, representing the Liquor Licence Board

HEARING
DATE: November 24th, 1981

REASONS FOR DECISION AND ORDER

This is an appeal with respect to the licence issued to Malachy McGann, David McGann and Danny McGann, the said licence being No. 010317. Daniel McGann now carries on the business in Williamsburg, Ontario having purchased the interest of David and Malachy McGann.

Mr. Grannum for the Board called three police witnesses while a large number of witnesses were called by the Respondent licensee in support of its position.

The only issue to be resolved at this hearing was whether the licensee was in breach of a term or condition of its licence. The allegation contained in the proposal issued by the Liquor Licence Board was that:

> "contrary to Section 5(5a)(a) of Regulation 1008/75 under The Liquor Licence Act, 1975, the licensee failed to ensure that evidence as to the age of persons apparently under the age of 19 years was obtained prior to permitting the said persons entry to the premises licenced as a lounge."

The history of the hotel is that it was acquired by Daniel McGann on or about September 15th, 1978. Daniel McGann is involved in the management of the hotel on a full time basis and is assisted by his wife, Greta. They reside on the premises of the Pioneer Hotel. The hotel itself is operated as a hotel with a licensed dining room and a licensed lounge. The lounge was the subject matter of this appeal. It is clear from the evidence that the hotel is largely patronized by townspeople and people from the surrounding farming community.

The incidents leading to this appeal are alleged to have taken place on January 29th, 1981 and February 26th, 1981 and were outlined by Constable Stephen Sloboda who was called on behalf of the Board as a witness. Constable Sloboda is a member of the Ontario Provincial Police force and has been for some three years. He is 24 years of age. He testified that he went to the Pioneer Hotel on January 29th, 1981 on the instructions of his superiors in an undercover capacity to observe patrons of the lounge in the hotel and the procedures being followed by employees of the hotel. In his evidence in chief he stated that he formed the opinion that on the night in question, that is, January 29th, 1981 some 30 persons out of a total crowd of some 100 to 125 people were under the legal drinking age of 19 years. He further testified that he felt the check system being utilized by the hotel employees at the entrance was less than adequate. The constable also spoke of conversations he had with some of the patrons while he made his rounds on the evening in question which in his opinion confirmed his views. He states that he left the premises without laying any charges and without speaking to the management since he felt it was his role to operate stricly on an undercover basis and he reported his findings to his supervisors.

Constable Sloboda indicates that he returned to the premises on January 30th which was the next day and in his view some ten persons were again under the legal drinking age of 19 years. Again no charges were laid and no discussions were had with management.

On February 26th, 1981 the lounge was raided by the Morrisburg Detachment. Constable Sloboda was present in the lounge but did not take any active part with respect to the checking of identification or with respect to laying charges. From other evidence, we know that as a result of the raid four charges were laid by the Ontario Provincial Police against four persons found on the premises.

In cross-examination, Constable Sloboda agreed that he was not experienced in this particular kind of undercover work and one was left with the impression this was his first assignment dealing with minor drinking. In fact, he gave no evidence of any experience he had upon which to base an opinion as to the operation of the lounge and the procedures that were followed. He further exhibited an imperfect memory in response to questions by counsel for the licensee. It is noteworthy that the Constable saw fit not to keep any written record of his observations and so was unable to refer to any notes made at the time of his observations.

Some comments can be made with respect to the Constable's testimony as follows:

(i) the Constable's description of the width of the entranceway was grossly exaggerated. He felt it was some four to five meters wide when in fact it was more like three to four feet wide. This is important evidence when one deals with the question of whether or not there was adequate control at the entranceway at the material times.

(ii) the Constable's vantage point from time to time provided him with less than an ideal position to view the employees and patrons of the establishment.

(iii) the Constable drew conclusions about the age of patrons on the basis of a less than clear foundation and was vague as to the real reason for his opinions.

(iv) the Constable agreed that the doorman was likely to know the patrons and it was possible he may have checked them on other occasions.

(v) the Constable agreed that an opinion as to a person's age might vary from one person to another and that the doorman might well have come to another conclusion.

(vi) when the raid was conducted on February 26th, 1981 the Constable agreed that notwithstanding the fact that only four persons were charged, he thought other persons looked under the age of 19 years.

On the basis of all of the Constable's evidence, the Tribunal is of the view that the only sound factual foundation to be derived from the evidence is that on February 26th, 1981 four persons were in the premises who were under the age of 19 years. For the purposes of this decision, the Tribunal refers to young as persons under the age of 21 years. Further, the Tribunal prefers not to accept the opinion evidence of the Constable as to the number of underage drinkers on the premises on January 29th, January 30th and February 26th, 1981. It is noteworthy that Constable Sloboda was of the view that a substantial number of underage drinkers were present on February 26th, 1981 even though only four were charged.

Constables Wilkins and Mantkolow of the Morrisburg Detachment of the Ontario Provincial Police also gave evidence and indicated that they laid charges against four individuals.

Constable Wilkins indicated that he issued a Summons to one young female person and was of the view that she looked less than 19 years of age. He agreed in cross-examination that this was an opinion and that at the time the person in question was some eleven or twelve days away from her 19th birthday. The Tribunal does note that Constable Wilkins did not originally question this female person and was not responsible for asking for her identification. it is further noteworthy that when he first met this person it had already been determined by others that she was under 19 years of age due to the identification check that had been conducted. In other words, Constable Wilkins knew she was less than 19 years of age when he first saw her and the Tribunal is mindful tht this may well have influenced his thinking in forming an opinion as to her age.

Constable Mantkolow indicated that his specific job was to lay charges if any underage drinkers were to be found and not to check identification. He indicates that three persons were brought over to him so that a Summons could be issued. He did indicate in a fair fashion that it was not his concern to develop any opinions as to the age of the individuals concerned although it is apparent from his evidence that he felt they were under the age of 19 years of age from appearances. He did in cross-examination indicate that it was possible that the doorman may have developed a conclusion that the individuals in question were in fact over the age of 19 years.

It is the Tribunal's view that there were four persons under the age of 19 years on the presises when the Morrisburg Detachment conducted its raid. The Tribunal is not, however, prepared to accord much weight to any of the other evidence offered by the police officers and must instead weight the evidence adduced by the licensee in its own defence with respect to the operating procedures in force and effect on the material dates.

Daniel McGann gave evidence on behalf of the Pioneer Hotel and provided the Tribunal with a general description of the Williamsburg area. He indicates as previously stated that he lives on the premises with his wife and two children and was originally a partner with his father and his brother. He states he is now the sole owner as of the date of the appeal. He further indicates that he never did get around to changing the licence and for that reason the licence is still stated as

being in the name of three of the McGanns rather than his own name. Certain photographs were filed with the Tribunal showing the premises and also a sign which indicates that only Age of Majority cards will be accepted. Mr. McGann stated that it was his usual practice to have a doorman stationed by the entranceway who would check the individuals entering as to age and also extract a cover charge on certain nights. He states that his patrons came from a radius of approximately 15 to 20 miles and that there was no other licensed premises within 5 miles. Mr. McGann indicated his awareness of the Age of Majority card and told the Tribunal of the procedure he followed in instructing his doorman. Mr. McGann indicated that to a great extent he left the question of age to the judgment of his staff. Mr. McGann further indicated that some 90% of the patrons were known to him and that the busiest night was Thursday night when he brought in live entertainment. He testified that with the live entertainment came the younger crowd in the 19 to 25 year range and that he was well aware that it was a young crowd. He states that for that reason he did have two individuals at the door who would ask for identification where they thought it was necessary and also for the cover charge. There was only one entrance people could use which was on the east entrance of the building. There is a lobby entrance to the lounge however it is locked except for the use of the band. Mr. McGann doubted that any person could enter through the lobby or any other access other than through the east entrance. It was Mr. McGann's evidence that if a person was asked for an Age of Majority card and did not produce one then they would not be allowed to enter unless they were known to the employees. He indicates that in his view he carried out a pretty strict operation.

Mr. McGann indicates that at the material times he was not aware that Constable Sloboda was on the premises and also felt that his doormen were performing their usual functions on the evenings in question. He states that he was attempting to correct a problem in one of the washrooms and for that reason was not aware of any problems with respect to underage drinking on the evening in question. He states that when the police came he was then advised as to the reason for their presence and indicated some surprise. He states that he does not know how many were checked on the night in question but that he felt that the four people who were charged looked over the age of 19 years.

On further questioning, Mr. McGann indicated that the doormen who worked at the material times had had some two months of experience and were fairly young themselves. Mr. McGann seemed to express some doubt that any difficulties would occur with respect to underage drinking because of the system

he had initiated. The Tribunal is left with the opinion that Mr. McGann delegated to a great extent his responsibility under The Liquor Licence Act to his employees.

The Reeve of the Township of Williamsburg, John Whittcher gave evidence on behalf of the Pioneer Hotel and the licensee. He stated that he went to the Pioneer Hotel from time to time and had occasion to observe patrons in the premises. He states that he had not had occasion to hear any complaints with respect to the operation of the hotel and particularly with respect to minors. In general, he gave a very favourable impression as to the kind of operation carried on by Mr. and Mrs. McGann at the Pioneer Hotel.

Keith Schell, the Clerk-Treasurer of the Township of Williamsburg, also gave evidence on behalf of the Pioneer Hotel and indicated that he had occasion to frequent the hotel. It is fair to state that Mr. Schell feels that the reputation of the Pioneer Hotel is good and that it performs a valuable service to the Village of Williamsburg. He stated that he had never heard any complaints about the Pioneer Hotel.

Greta McGann was also called by the licensee and confirmed to a substantial degree the evidence given by her husband. Mrs. McGann runs the dining room operation together with two other staff and has not been involved in the operation of the lounge to any great extent. She states that the policy of the hotel is to check anyone who appeared to be under the age of 19 years. She states that she had given those instructions herself. The evidence of Mrs. McGann indicated that she expected her employees to check identification in the event of any doubt as to the age of prospective patrons entering the premises. Mrs. McGann was not in the lounge on January 29th but does recall being in the lounge on February 26th when the raid took place. She states that she was helping her husband who was having some difficulty with plugged toilets as indicated earlier. She states that she was in the washroom when the police came and asked the police if they had a warrant for their raid. She states that the police checked both sides of the floor and told people over the public address sytem to sit still while identification checks were conducted. It was her view that they went to every table in the premises and that four people were charged.

Mrs. McGann states that she observed the four individuals who were charged and was of the view that they all looked 19 years of age. She states that she was not surprised that the individuals who were charged had not been checked at the door since they did look over the age of 19 years. Mrs. McGann and her husband indicated that because of the

familiarity with patrons in the area constant checking is not required since the doormen do form some knowledge of the individuals on the basis of past checking on other occasions and due to the fact that many individuals were known to them through high school and other associations in this area.

Kevin Keyes was the doorman on the night in question. He is 22 years of age and worked in a chemical plant. He indicated that his instructions were to check identification if there was anyone he did not know was 19 years of age or over or looked under the age of 19 years. He states that he also has worked from time to time as a waiter and also checked people on the same basis. He said that on the evening in question he took up his position at the east entrance and that there are always two individuals at the door at the beginning of the evening because most of the patrons would attend between 9:00 and 10:00 and additional help was necessary. He states that his job was to check identification and normally only the Age of Majority was acceptable if the check was made. He states that on occasion he would accept a driver's licence or a birth certificate if there was more than one piece of identification in the possession of the individual being checked. Mr. Keyes indicated that nobody would be able to get past the doormen because of the small entranceway and that he knew most of the people from his high school days. He had no recollection as to anything being unusual on January 29th when Constable Sloboda first attended even though he was on duty as the doorman. Mr. Keyes indicated that one person was responsible for taking the cover charge and the other was responsible for checking identification. On February 26th, 1981 Mr. Keyes was on the door with another person and he does remember turning one or two people away since they could not produce identification. He states that at approximately 9:30 p.m. he left the door to go work on the bar and that Bill Wells was left working the door by himself. Keyes looked at two of the four individuals charged on the evening in question and felt that they looked over the age of 19 in his opinion.

Bill Wells, who was also on duty on the night in question, confirms to a great extent the evidence of Mr. Keyes and stated that it was his job to look at everybody to make a judgment call if they were 19 years or over. He also indicated in his evidence that any doubt was to be resolved in favour of the establishment and that a check was to be conducted. He confirms that normally the Age of Majority cards was required. Mr. Wells stated that most of the people who came into the premises were known to him and he does recall checking I.D.'s on the night in question. He further indicates that he saw two of the individuals who were charged and that in his view they looked over the age of 19 years of age even after he was made aware of the fact that they were under the age of 19 years.

Evidence was also given by three other employees on behalf of the respondent which indicated that they had seen some of those charged and were of the view that they did look over the age of 19 years.

By way of corroboration the licensee also called Fred Mesman who previously was a doorman at the Pioneer Hotel and corroborated to some extent the evidence of Keyes and Wells as to the procedure to be followed at the door on a busy night. He again indicated that it was a "repeating" crowd and that in his view some 95% of the patrons would be known to the doorman.

The issue to be determined is whether or not the licensee has breached the duty as set out in Section 5 (5a)(a) of the Regulations. That Regulation reads as follows:

> "(5a) The holder of a licence shall ensure that evidence as to the age of the person, satisfactory to the licence holder, is obtained,
>
> > (a) prior to permitting a person apparently under the age of nineteen years entry to premises not prescribed by section 46;"

A number of authorities were recited to the Tribunal dealing mainly with a breach of the provisions of The Liquor Licence Act and what is now Section 45 of the said Act. The Tribunal has reviewed all of the authorities carefully and finds that while there is some assistance to be gained from the authorities, if one is to reason by analogy, one must still have recourse to the actual words of the Regulation in question in order to determine what duty and obligation has to be met by the licensee. It is the Tribunal's view that the section is clear in its requirements and that if a person entering the establishment is apparently under the age of 19 years of age in the opinion of the licensee or the person to whom the licensee has delegated that responsibility, then the licensee or its agents, employees or other representatives must ensure that evidence is obtained from that person satisfactory to the licence holder that the person is in fact 19 years of age. Obviously if the identification produced does not satisfy the licensee the person should not be admitted to the premises.

By the very wording of the Regulation, it is apparent that an opinion must be formed by the person charged with that responsibility. It is the view of the Tribunal that the section was not meant to imply absolute liability in the event an error is made in the formation of that opinion, and further, the very words indicate that the Legislature for the

Province of Ontario did not expect a licensee to be infallible. In other words, it is necessary that an opinion be formed and one must instead examine the circumstances under which such an opinion is formed and the steps which a licensee took to prevent error, carelessness or recklessness in the formation of that opinion in admitting persons under the age of 19 years to the establishment.

The Tribunal has examined all of the evidence in detail and is of the view that the licensee took reasonable and necessary steps to fulfill its obligations under Section 5(5a)(a) of the Regulations to The Liquor Licence Act. In particular, the Tribunal notes that the licensee was impressed with the knowledge that on certain evenings a young crowd was in attendance and for that reason knew that additional or exceptional steps should be taken from time to time to ensure that underage people would not frequent the establishment. This the licensee did do. This onus was also increased by virtue of the fact that this is the only licensed establishment catering to young people with live entertainment in the Williamsburg area. It is clear that Daniel McGann, the licensee, delegated to a great extent the obligation which he accepted as the owner of this establishment and relied on individuals younger than himself in terms of experience to fulfill his obligations under The Liquor Licence Act. It is also clear, however, on the basis of the evidence called by the licensee that Mr. McGann did not discharge this duty in a careless or reckless manner and in fact the Tribunal finds that Mr. McGann took reasonable and necessary steps to comply with the Act and the Regulations.

The Tribunal has considered this matter carefully. The Tribunal notes that the onus is on the Board to satisfy the Tribunal that a breach of the Regulations took place. On the basis of all of the evidence before it, the Tribunal prefers the evidence of the licensee and finds that the weight of that evidence is such that the Tribunal is unable to satisfy itself that the Board has satisfied the onus placed upon it in a hearing de novo. That being the situation, the Tribunal is of the opinion that the Board was incorrect in its decision to suspend the lounge licence of the licensee. The Tribunal therefore revokes the Order of The Liquor Licence Board dated June 25th, 1981 suspending the licence of Pioneer Hotel and in its place instead substitutes the opinion of the Tribunal that the licensee did not breach the provisions of Regulation 5(5a)(a).

ROCCO DI GIUSEPPE
[LICENSEE OF TRAMP RESTAURANT]

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD DATED THE 20TH DAY OF AUGUST, 1981

TO ATTACH A TERM AND CONDITION TO THE DINING LOUNGE LICENCE

TRIBUNAL: GORDON PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA SHAND, MEMBER
GALE McAULEY, MEMBER

COUNSEL: HOWARD S. BUCKMAN, representing the Applicant

S.A. GRANNUM, representing the Liquor Licence Board

HEARING DATE: January 8, 1982

DECISION AND ORDER

BY VIRTUE OF THE AUTHORITY vested in it under the Liquor Licence Act, the Liquor Licence Appeal Tribunal upon being advised by counsel for the Applicant and counsel for the Liquor Licence Board that the parties hereto have executed an Agreement dated the 7th day of January, 1982, the terms of which are set out below, the Liquor Licence Appeal Tribunal hereby revokes the Order of the Liquor Licence Board dated the 20th day of August, 1981, and orders that there shall forthwith be attached to the Dining Lounge Licence No. 020229 issued to Rocco Di Giuseppe in respect of the above establishment the following terms and conditions:

(a) Sign on southeast side of outside of building to read "Tramp Restaurant" to be done within 10 days hereof; Schlitz sign to be removed within same time period.

(b) Premises to open at 6:00 p.m. daily and operate until 1:00 a.m.

(c) Tables to have menus thereon at all times; tablecloths and placemats between 6:00 and 9:00 p.m. on 15 tables in front section.

(d) Licensee to utilize only one cash register to record sales with second cash register to remain as spare only. Third cash to be only for change. Fourth register to be removed.

(e) Licensee to keep the following accurate records on the premises on a daily basis:

-separate guest cheques.

-cash register receipts; categorized daily totals.

-detailed tape to show breakdown of liquor, beer/wine, food, sundries and tax on a per item basis.

(f) Licensee to file with the Board all monthly statements as required under the Act.

TWEEDSMUIR HOTEL (WESTPORT) LTD.

APPEAL FROM A DECISION OF THE LIQUOR LICENSE BOARD

TO SUSPEND A LOUNGE LICENCE

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA SHAND, MEMBER
GALE McAULEY, MEMBER

COUNSEL: PETER HALL, representing the Applicant

S.A. GRANNUM, representing the Liquor Licence Board

HEARING DATE: October 28, 1982

REASONS FOR DECISION AND ORDER

Tweedsmuir Hotel (Westport) Ltd. is the holder of dining lounge and lounge licences (No. 010700) for the premises located in the Tweedsmuir Hotel, it having acquired the liquor licences by way of transfer in May of 1982 from Richard William Ready. The officers and directors of the corporate licensee are Richard William Ready, President; Murray Stewart, Secretary-Treasurer; Julia Ready, Director; Sandra Stewart, Director. The licences are issued in respect of a dining lounge having a capacity of 63 persons and two lounge areas having capacities of 88 persons and 59 persons respectively.

Prior to the transfer of the licences to the corporate licensee, the premises had, since June of 1981, been operated by the said Richard William Ready.

On the 15th day of June, 1982, the Liquor Licence Board issued a Notice of Proposal to suspend for a period of 30 days the liquor licences of the licensee corporation for the following reasons:

> "The past conduct of its officers and directors, and in particular the said Richard Ready, affords reasonable grounds for belief that its business will not be carried on in accordance with law and further, the licensee corporation is in breach of a term and condition of its licence in that, contrary to Section 8(4) of Regulation 581/80 under the Act, the licence holder permitted drunkeness and disorderly conduct to take place on the licenced premises."

A hearing to consider its proposal was held by the Board on the 5th day of August, 1982, at which time, the Board ordered that the "LOUNGE" licence issued in respect of the Tweedsmuir Hotel be "SUSPENDED", commencing at the opening hour on Monday, August 23, 1982 and continuing in effect until the opening hour on Saturday, September 4, 1982.

The Applicant required a hearing by this Tribunal respecting the said decision and a stay of the Order of the Liquor Licence Board was granted until this Tribunal makes its decision.

The Notice of Proposal referred to 12 separate instances of the sale and service of liquor to intoxicated persons in the licenced premises and several disturbances which took place which are as follows:

(a) On November 29th, 1981 at 12:35 a.m., Francis CLINTON of Jasper, Ontario was found in an intoxicated condition on Bedford St., Westport. She had been drinking at the hotel.

(b) On January 30th, 1982 at 5:20 a.m., Kenneth FERGUSON of Carleton Place was found operating a snowmobile erratically on Bedford St., Westport. He had been drinking at the hotel and had just left it.

(c) On February 6th, 1982 at 12:05 a.m., Peter LEPAGE, Kingston, was observed driving his vehicle south on County Road #10 in an erratic manner. He had just left the hotel.

(d) On February 11th, 1982 at 11:15 p.m., Joseph NORRIS, Westport, left the hotel in an impaired condition in his vehicle and was involved in a hit-and-run accident three blocks away.

(e) On February 20, 1982 at 12:05 a.m., David HUNT, Elgin, Ontario left the hotel in an impaired condition in his vehicle and was stopped two blocks away for driving erratically.

(f) On February 20, 1982 at 6:20 a.m., Kevin KERR, Perth, Ontario was observed standing outside the rear of the hotel drinking beer from a hotel glass pitcher.

(g) On February 20, 1982 at 8:45 p.m., Grant DOPSON, Perth, Ontario was observed leaving the hotel in an intoxicated condition and attempted to get into his vehicle parked out frot of the hotel.

(h) On March 3rd, 1982 at 11:15 p.m., Patrick MURPHY, Kingston, was observed driving away from the front of the hotel with a part pint of beer on his vehicle's roof. He had been drinking in the hotel and was in an impaired condition.

(i) On March 19th, 1982 at 4:45 p.m., Gregory GRANT of Westport was found in an intoxicated condition on Bedford St., Westport. He was walking home after drinking in the hotel.

(j) On April 14th, 1982 at 12:30 a.m., Steven DAY, Elgin, Ontario was observed driving in an erratic manner on Church St., Westport. He had just left the hotel and was in an impaired condition.

(k) On April 17th, 1982 at 6:20 p.m., James CHANT, Portland, Ontario was stopped for driving in an erratic manner on a Township Road north of Westport. He had just left the hotel and was registered a "Warn" on the A.L.E.R.T. machine.

(l) On or about May 7th, 1982 at approximately 11:55 p.m., the Board's inspector entered the licensed premises and shortly thereafter, a fight broke out in the premises between patrons. Neither the said Mr. R. Ready nor his partner made any attempt to stop the fight.

At the commencement of these proceedings, counsel for the Board advised that he would be calling no evidence with respect to items (d), (h) and (i).

The occurrences which are the subject of the Notice of Proposal are basically divided into two categories. The events related to items (a), (b), (c), (e), (f), (g) and (j) did not occur on the licenced premises, but consisted of liquor charges laid against individuals either for being intoxicated or charges related to impaired driving. The events relating to item (l) actually occurred on the premises and, in addition, evidence was introduced before the Tribunal of an occurrence within the licenced premises on May 8, 1982, which was not referred to in the Notice of Proposal. The agent for the Applicant objected to any evidence being introduced with respect to the events which occurred on May 8, 1982, as this had not been included as part of the Notice of Proposal, but

the Tribunal ruled that it was within its authority to hear such evidence and to attribute such weight to that evidence as it deemed appropriate.

Constable C.D. Willis of the Westport detachment of the Ontario Provincial Police was called to the Tweedsmuir Hotel by a hotel patron, Francis Clinton, who claimed that her car had been stolen. She appeared to be in an impaired state at that time and her car was apparently taken by her common-law husband. Several hours later, she attended at the police station demanding a ride home, at which time, she was charged with being intoxicated in a public place. On cross-examination, Constable Willis stated that Francis Clinton was not intoxicated when he saw her in the hotel and that he had no knowledge of whether she continued drinking at the hotel.

Constable Willis testified that on January 30, 1982, he charged one, Kenneth Ferguson, with respect to the operation of a snowmobile in the Village of Westport. The police officer stated that when he asked the accused where he had been drinking Mr. Ferguson stated that he had been drinking at the Tweedsmuir Hotel. Under cross-examination, Constable Willis confirmed that Ferguson was convicted of operating a snowmobile, he having consumed more than 80 milligrams of alcohol per 100 milliliters of blood. The police officer stated that he did not return to the hotel to determine whether Ferguson had, in fact, been drinking there and he had no evidence as to how long ago the accused had been drinking at the hotel. He acknowledged that the evidence as to the place where Ferguson's drinking occurred was only hearesay evidence.

Constable Willis testified that on February 20, 1982, Kevin Kerr was observed at the rear of the Tweedsmuir Hotel drinking beer from a hotel glass pitcher and was convicted of unlawful possession of liquor pursuant to Section 45(3) of the Liquor Licence Act. Constable Willis confirmed that this incident occurred on Westport Snowmobile Carnival Weekend which is a very busy weekend, and that because of the great number of people who came into town, the police gave special attention to the activities. Constable Willis confirmed that the Tweedsmuir Hotel is the only regularly licenced premises in Westport, but he had no knowledge with respect to Special Occasion Permits which may have been issued to other establishments for that weekend. Constable Willis stated that he had no evidence of whether the pitcher of beer was given to Kerr or whether it had been stolen by him.

Constable Willis testified that at approximately 10:50 p.m., on the evening of February 19, he saw David Hunt and two other men come out of the Tweedsmuir Hotel and that they were in a boisterous condition. Constable Willis advised Hunt not to move his car or he would be charged with impaired driving. Constable Willis stated that the men returned to the hotel. Subsequently, in the early morning of February 20, the said David Hunt was charged with impaired driving about two blocks away from the hotel by another police officer of the Westport detachment. Hunt was subsequently convicted under Section 236 of the Criminal Code (over 0.08), but was not convicted of impaired driving. Constable Willis stated that he had no knowledge of Hunt's whereabouts between 10:50 p.m., on the evening of February 19 and 12:05 a.m. on the early morning of February 20, and he made no investigation as to Hunt's whereabouts during that period of time.

Constable Willis also gave evidence that on April 14, 1982 at 12:30 a.m., he observed one, Steven Day, driving in an erratic manner on Church Street in Westport. Day was charged with impaired driving, but was subsequently convicted of driving with more than 80 milligrams of alcohol per 100 milliliters of blood. The police officer stated that Day admitted that he had been drinking in the hotel, but Constable Willis made no investigation of whether Day was actually at the hotel.

Constable Willis also stated that an accomplished drinker could be guilty of having more than 80 milligrams of alcohol per 100 milliliters of blood, but not be impaired. It was a question of degree.

The next witness called on behalf of the Board was Constable Donald Norlock who had been stationed with the Westport detachment of the Ontario Provincial Police for three and one-half years. Constable Norlock stated that on February 6, 1982 at approximately 12:05 a.m., he stopped a car on County Road #10 being driven in an erratic manner by one, Peter LePage. LePage showed obvious signs of impairment, but refused a breathalyser test. He admitted that he had consumed liquor in Perth and in Westport. His motor vehicle had been seen parked earlier on Bedford Street in Westport, but the police officer had not seen him in the hotel. LePage failed to appear for his trial and a warrant is outstanding for his arrest.

Constable Norlock gave evidence that on Carvinal Day, February 20, 1982, Grant Dopson of Perth was seen to stagger out of the hotel and attempt to open his car. He was arrested and taken to the police station where a friend from Perth

picked him up. The police officer testified that Dopson had stated that he was with a party and did most of his drinking at the Tweedsmuir Hotel. On cross-exmination, Constable Norlock stated that no charges were laid against Dopson. He stated that Dopson was grossly impaired, but was not intoxicated. The Constable also stated that there was no evidence where Dopson's other drinking occurred.

Constable Norlock gave evidence that on April 17, 1982, James Chant was stopped for driving in an erratic manner on a Township Road north of Westport. A roadside sample of his breath was taken and he failed this response. He states that he had been at the Tweedsmuir Hotel and that he had done some of his drinking there. He had an open six-pint case of beer in his car. He was taken to the police station and given a formal breathalyser test which disclosed 70 milligrams of alcohol per 100 milliliters of blood. On cross-examination, Constable Norlock stated that Chant was not charged with any driving offence as he was not intoxicated and was not impaired and was subsequently convicted of having open liquor in a motor vehicle under Section 48(1) of the Liquor Licence Act.

Constable Norlock also stated under cross-exmination that he had made various liquor seizures on Carnival Weekend.

The next witness called on behalf of the Board was Constable R.L. Robins of the Prescott detachment of the Ontario Provincial Police. He advised that he had been attached to the Perth crime unit and had been requested to attend at the Tweedsmuir Hotel with respect to liquor violations. He stated that he arrived at the hotel on the evening of May 7, 1982. Two persons were wrestling and pushing each other on the dance floor. Constable Robins stated that the fight was broken up by other patrons and that he did not see Richard Ready, one of the proprietors, involved in any struggle.

Constable Robins also gave evidence with respect to an incident which occurred on the evening of May 8. Mr. Hall registered a formal objection to this evidence on behalf of the licensee on the grounds that this incident had not been included in the Notice of Proposal and that the licensee should not be called upon to defend itself with respect to any incident not included in the Notice of Proposal. Mr. Grannum argued that the matter was included in the evidence given before the Board's hearing and was, therefore, a matter properly before the Tribunal. The Tribunal ruled that the evidence of the May 8 incident would be admissible before the Tribunal.

Constable Robins advised that he entered the Tweedsmuir Hotel at approximately 7:15 p.m., on the evening of May 8. During the evening he noticed a female on the dance floor who was obviously intoxicated and had to be held up by her partner. At about 11:10 p.m., the same person fell down on the dance floor and was helped by a waitress to her table. She was subsequently seen with a drink in her hand, the contents of which were unknown. Constable Robins testified that Mr. Ready, at that time, required her to leave the premises. On cross-examination, Constable Robins stated that the female was not charged. He stated that he did not see her sitting with any other women.

The next witness called on behalf of the Board was Inspector Elaine L. Earle who is a liquor inspector with the Liquor Licence Board. She stated that she took up her inspection duties in November of 1981. She stated that she had received complaints from the Ontario Provincial Police with respect to the Tweedsmuir Hotel; specifically the overserving of patrons, overcrowding and that liquor was being taken from the premises. Inspector Earl stated that on March 4, 1982, she attended at the hotel and discussed the problems with Mr. Stewart. She subsequently wrote up a form "220" setting out the nature of the complaints and Mr. Stewart signed the form acknowledging that the various matters had been discussed with him.

Inspector Earl gave evidence that she subsequently received various complaints from the police department with respect to the Tweedsmuir Hotel premises and was instructed to pay a night visit on May 7, 1982. She was advised that two plain-clothed officers would be in the hotel. Inspector Earl entered the hotel at approximately 11:55 p.m., and she stated that a fight started within five minutes and that several patrons helped to break up the fight and the fighters were ejected. Inspector Earl stated that she asked Mr. Ready why he did not break up the fight and he stated that he did not break up fights as good friends and patrons would look after any fighters. She stated that there had been no problems or complaints to the Liquor Licence Board since the May 7 weekend, except for the complaint of one neighbour.

On cross-examination, Inspector Earl stated that she was not accustomed to violence, but that she had been present at many fights. She stated that she had been standing at the bar observing the fight and that Mr. Ready was not involved, but that when the fighters went out the front door Mr. Ready went out with them. She had no idea how long the fight lasted.

The licensee called as its first witness Judy Grimard, a resident of Glenburn, and the wife of a member of the band playing in the hotel on May 7, 1982. She stated that she was in the hotel on the evening of May 7 and was seated at the first table next to the dance floor. She stated that late in the evening she saw a scuffle near the pool table involving Mr. Ready wrestling with a patron. She stated that Mr. Ready and Mr. Stewart escorted the patron outside. She saw no trouble prior to that and said that the ejection of the patron was handled very efficiently. Mrs. Grimard stated that while this was going on two other patrons were holding each other on the dance floor and one was trying to hold the other from becoming involved in the dispute between Mr. Ready and the patron. This encounter was broken up by other patrons.

Mrs. Grimard stated that she was also present at the Tweedsmuir Hotel on the evening of May 8, 1982, and was sitting at the same table. She stated that she noticed a female who appeared to be in a weird state and "very hyper". She stated that the female appeared to be suffering more from the effect of pills than from alcohol. Mrs. Grimard stated that she did not see the female being served any liquor, but that she had tried to grab the microphone on the stage on one occasion and Mr. Ready had escorted her back to the table. She was also trying to take drinks off various tables including Mrs. Grimard's table. She stated that she felt that Mr. Ready was controlling this person very well. On cross-examination, Mrs. Grimard stated that the female was behaving very erratically. She stated that she did not know or was not able to identify Inspector Earl and that she did not see Mr. Ready talking to Mrs. Earl. When questioned as to the type of patron who attended the hotel, she stated that they were not boisterous or rough and that she was not nervous at that hotel. She also stated that she had clear visibility to the floor and that there were no more than six couples dancing on the floor. She also stated that the two incidents, the first near the pool table involving Mr. Ready, and the second on the dance floor, were apparently related.

The next witness was Nancy Grimard, a sister-in-law of Judy Grimard, who was also present on both May 7 and May 8 with her sister-in-law. She substantially confirmed the evidence given by Judy Grimard. Under cross-examination with respect to the incident of May 8, she said that the girl on the dance floor did not appear to be intoxicated but was very "flaky". She had attempted to get a drink from the Grimard table and from another table and was complaining to Mr. Ready that she could not get a drink.

James Henry Marks, a full-time bartender of the Tweedsmuir Hotel, stated that he commenced work at the hotel in June of 1981, and that in the period from June of 1981 to June of 1982, there were only three fights in addition to the May 7 incident. He stated that on May 7 he saw Mr. Ready wrestling with one, Martin, and that Mr. Ready and Mr. Stewart removed Martin from the premises. He stated that at this time he saw two other patrons scuffling on the dance floor and they then were separated by other patrons and went outside. He stayed behind the bar in order to protect the bar.

On cross-examination, Mr. Marks stated that he was on duty on February 20 (Carnival Weekend) and recalled the incident of the beer pitcher being returned to him. He stated that he does not serve the tables and only serves the waitresses who look after the tables. He stated that he did not know any of the persons referred to in the Notice of Proposal of the Board. He confirmed that February 20 was a very busy weekend.

Murray Angus Stewart, the Secretary-Treasurer of the Tweedsmuir Hotel (Westport) Ltd. stated that he was present on May 7, 1982. He stated that one patron, a Mr. Martin, appeared to be causing problems and appeared to be getting into a state of intoxication. Mr. Stewart stated that he instructed the bartender Marks sometime between 9:00 p.m. and 10:00 p.m. not to serve Martin any further liquor and Martin left the hotel. He stated that Martin returned to the hotel about 11:30 p.m. and went over to the area of the pool table and attempted to overturn the table. Mr. Ready who was following him wrestled him to the floor. Mr. Stewart did not take part in this scuffle and stated that Mr. Ready told him to wait until Martin cooled down and that they would then take him outside. Mr. Stewart stated that one other person attempted to intervene and that a second man grappled with him on the dance floor to hold him back. Mr. Stewart stated that Martin was taken into custody by the Ontario Provincial Police and charged. He stated that the hotel has barred Martin from the hotel after May 7, 1982. Stewart also stated that a lady (later identified as Inspector Earl) approached him and asked him why he did not do anything. He stated that there was no need to interfere and that everything was under control. Mr. Stewart also gave evidence as to the May 8 incident. He stated that the female was not a regular patron and had been travelling with two other girls and had stopped at the hotel on the evening of May 8. He stated that she was originally drinking vodka and orange juice, but that because of her condition she had been cut off. He believed that other people may have been buying her drinks. Stewart stated that it was a policy of the hotel not to eject patrons from the hotel premises because it was a country hotel with no taxi service available and that they would not eject

patrons if other means were available. He stated that they would suggest patrons sit in the lobby if they might have had too much to drink.

Stewart stated that with respect to items 1 to 11 in the Notice of Proposal no police officer or other person had ever brought any of these incidents to the attention of either Mr. Ready or himself. He stated that he only knew Joseph Norris (incident 7.(d)) and Gregory Grant (incident 7.(i)). He stated that the hotel had been charged by the police with unlawfully permitting the sale of liquor, but that the hotel had been acquitted.

Richard William Ready, the President of the licensee corporation, stated that he originally owned the hotel from June of 1971 to January of 1975, when it was sold. He stated that during his original period of ownership there had never been any suspensions. Ready stated that in June of 1981, he was forced to take foreclosure proceedings and took over as a mortgagee in possession. The liquor licences were transferred to Tweedsmuir Hotel (Westport) Ltd. in May of 1982.

Ready gave evidence with respect to the May 7, 1982 incident and stated that Terry Martin was not a regular patron but would only come into the hotel once every two or three months. He had a history of becoming difficult when he had too much to drink. He stated that about 9:00 p.m. on the evening of May 7 he requested Martin to leave and instructed Mr. Marks to cut him off. He stated that Martin left the hotel and returned about 11:40 p.m. when he proceeded to break a light. He was again requested to leave, but he ran around the pool table and attempted to disturb the table. Ready stated that he wrestled Martin to the floor. When asked by Mr. Stewart whether he needed any assistance, he told Stewart to stay away and that he would hold Martin until he cooled down. Martin agreed to leave and was conducted outside by Ready and Stewart where he took another swing at Mr. Ready and a further fight ensued. Ready stated that he returned to the hotel and discussed the matter of the scuffle with Mrs. Earl and that there was also a discussion about the scuffle on the dance floor.

Ready also gave evidence with respect to the May 8 incident and stated that three young ladies came into the hotel about 5:00 p.m. They stated that they were airline stewardesses from British Columbia and were travelling from Ottawa to Kingston. Some of the patrons had bought them drinks. About 9:00 p.m. the youngest girl wanted to dance, but because of her unusual behaviour she was cut off. Her two friends stated that they would look after her. Ready gave evidence that during a band intermission the girl tried to get

on the stage and Mr. Ready stood by the stage to stop her from interfering with the equipment and band instruments. He stated that shortly after, her two friends took her out.

Mr. Ready also gave evidence with respect to Carnival Weekend. He stated that he had hired five extra people and had a staff of nine in addition to Mr. Stewart and himself. He stated that the hotel was full and 26 people were also being served dinner that evening. He gave evidence that there were approximately 2,000 people in Westborough that day (a village with a population of about 600), and that there had been a Special Occasion Permit issued for that day at the fire hall. Ready gave evidence that it was a very cold day and that most of the patrons were wearing snowmobile suits and helmets.

Ready recalled Grant Dopson entering the hotel and asking for a room on the evening of February 20. He was advised that there were no rooms left, but he made arrangements for him to have a bed in a storeroom for the night.

Counsel for the Board submitted that the burden of proof was on the Board to prove the various incidents set out in the Notice of Proposal, but that it was not necessary to prove these incidents beyond a reasonable doubt. He also submitted that hearsay evidence is admissible, but that it is the responsibility of the Tribunal to determine the weight to be attached to hearsay evidence. He then proceeded to review the specific incidents in paragraph 7 of the Notice of Proposal and submitted that there was some implication with respect to most of them that the persons involved had been in the licenced premises in an intoxicated condition. He further submitted that if all of the incidents are taken together, they are evidence of a total picture of the type of operation being conducted. He submitted that there was a greater degree of diligence on the part of the licensees with respect to the operation of the premises in a rural area than there would be in a more built up area. He concluded this section of his argument by submitting that in taking all of the evidence for the incidents numbered 7. (a) to (k), inclusive, (expecting items (d), (h) and (i) which were withdrawn by the Board) there was sufficient evidence of a connection between intoxicated persons and the licenced premises to indicate that the licensee could be operating the said premises contrary to law.

Counsel for the Board also referred to the two incidents of May 7 and May 8. With respect to the May 7 incident, he submitted that there was evidence of excessive use of alcohol and that the same applied to the incident on May 8 when there was no attempt made to stop the woman from drinking. He concluded by stating that the Board had the right to assume that there was sufficient evidence to justify the suspension and that the same evidence was before the Tribunal.

Mr. Hall for the licensee submitted that the original Notice of Proposal contained 12 incidents and that the first 11 were with respect to items which occurred outside of the hotel, and this was subsequently reduced to eight by the withdrawal of three of the incidents above referred to. He stated that the police officers were not investigating the hotel and made no attempt subsequent to the arrest of the various individuals to confirm that they had been, in fact, drinking on the licenced premises. He referred to the Tribunal's decision in the "Cecil Tavern" appeal (Volume 1, page 39) in that it would be useful if arresting officers were to investigate the premises more fully. He submitted that the licensees first became aware of the incidents set out in the Notice of Proposal when it was issued in June of 1982, and referred to incidents which occurred between two and five months earlier. He submitted that the failure on the part of the police officers to investigate and notify the licensees with respect to service to intoxicated persons is very weak and suspect. He further submitted that the evidence with respect to all eight of the said incidents outside the premises is hearsay, in the form of casual comment, and was not followed up with any further investigation. Mr. Hall submitted that the offence of consumption of alcohol in a public place is a common offence and that any person if apprehended on the street, will say that they have been drinking either at home or in licenced premises in order to protect themselves against any charges. He further submitted that the Board had not by its evidence established a sufficient standard of proof required to justify the suspension with respect to the eight incidents which occurred outside of the licenced premises.

With respect to the incident of May 7, Mr. Hall argued that there was ample direct evidence given by the witnesses for the licensee as to what actually occurred. He also referred to the evidence that Martin had been ejected from the hotel earlier in the evening for improper conduct and that the fight occurred immediately upon his return when Mr. Ready attempted to control his improper activities.

On the basis of the evidence before it, the Tribunal finds that the Board has not satisfied the burden of proof with respect to the various incidents listed in paragraph 7 of the Notice of Proposal. Much of the evidence connecting the various incidents to the licenced premises was casual hearesay evidence and was not the subject of further investigation. The evidence is such that using the test of preponderance of evidence as the burden of proof, there is no direct link between the majority of the actions alleged and the hotel itself.

The evidence with respect to Francis Clinton (7.(a)) was that she appeared to in an impaired state in the hotel when she had called the police about her stolen car, but Constable Willis, on cross-examination, stated that she was not intoxicated at that time. She was subsequently arrested at the police station and the officer had no knowledge of whether she continued to drink in the hotel. He was not present when she was charged.

Kenneth Ferguson was charged with the impaired driving of a snowmobile. He acknowledged to the police officer that he had been drinking at the hotel, but there was no evidence of where all of the drinking took place. Subsequently, the charge of impaired driving was withdrawn and Ferguson was convicted of driving while having consumed more than 80 milligrams of alcohol per 100 milliliters of blood.

Peter LePage (7.(c)) was observed driving his vehicle on County Road #10 and was charged with impaired driving. He failed to appear in court and there is a warrant out for his arrest. He admitted consuming liquor in Perth and in Westport. His truck was seen parked earlier on Bedford Street in Westport, but LePage was not seen in the hotel.

David Hunt (7.(e)) was seen coming out of the Tweedsmuir Hotel in a boisterous condition and he was advised by Constable Willis not to drive his car or he would be charged with impaired driving. Later that evening, he was stopped by another police officer and was charged and subsequently convicted of driving with more than 80 milligrams of alcohol per 100 milliliters of blood. Constable Willis, on cross-examination, stated that he had no knowledge of Hunt's whereabouts between the time he was warned earlier in the evening and his subsequent arrest about an hour and 15 minutes later.

Keven Kerr was charged and convicted of having liquor in a public place under Section 45(3) of the Liquor Licence Act. He was observed by Constable Willis standing behind the hotel with a pitcher of draft beer. He admitted that he took the pitcher from the hotel, but there was no evidence as to whether the pitcher had been given to him or whether he had stolen it. This incident occurred on Carnival Wwekend which was a very busy weekend with many snowmobilers. The hotel was much busier than usual on that day and there was evidence before the Tribunal that Special Occasion Permits had been issued to at least one other establishment. The only connection with the licenced premises was the admission of Kerr that he took the pitcher from the hotel.

Grant Dopson (7.(g)) was observed leaving the hotel in an impaired condition, but he was not charged and was later picked up by his friend. Mr. Ready's evidence was that Mr. Dopson had not been in the licenced premises, but that he had come into the hotel asking for a room. The only connection with the licenced premises was Dopson's statement to the police officer that he was with a party and did most of his drinking at the hotel.

Steven Day (7.(j)) was observed driving in an erratic manner on Church Street in Wesport and was subsequently convicted of driving with more than 80 milligrams of alcohol per 100 milliliters of blood. The only conncection with the licenced premises was Day's statement to the police officer that he had been drinking in the Tweedsmuir Hotel. The officer made no further investigations as to whether he was actually at the hotel.

Day, Hunt and Ferguson were all convicted of driving with more than 80 milligrams of alcohol per 100 milliliters of blood but, on cross-examination, Constable Willis stated that an accomplished drinker could be guilty of this offence but not be impaired. The Tribunal finds this significant because without impairment there could not be intoxication within the meaning of the Liquor Licence Act.

James Chant (7.(k)) was stopped for driving in an erratic manner on a Township Road north of Westport. He was subsequently given a breathalyser test but, as a result of the test, his alcohol content was below 80 milligrams of alcohol per 100 milliliters of blood and he was not charged. He was charged and convicted of having an open six-pack container of beer in his vehicle.

There is conflicting evidence with respect to the incident in the hotel on May 7, 1982, which involved the fight near the pool table. The evidence of the liquor inspector was that two patrons were involved in the scuffle, but the evidence of five witnesses on behalf of the licensee was to the effect that Mr. Ready was one of the two participants and that Mr. Ready was attempting to eject Martin from the hotel and that while this was going on two other patrons were involved with each other, one attempting to restrain the other from becoming involved in the scuffle between Ready and Martin. Mr. Ready's evidence which was confirmed by Mr. Stewart was that Martin had been causing problems earlier in the evening and had been refused service and had left the hotel. It was when he returned approximately an hour and one-half later that he immediately started to cause trouble and the resulting scuffle ensued. On the evidence, the Tribunal finds that Mr. Ready and Mr. Stewart were taking reasonable steps to eject an unruly patron who had returned to the hotel after being refused service earlier in the evening.

The incident of May 8 involving the young woman travelling from Ottawa to Kingston also appeared to be a difficult situation for the proprietors. The evidence before the Tribunal was that she had been cut off around 9:00 p.m. and that she had been behaving very strangely. Her friends stated that they would look after her but appeared unable to control her. Mr. Stewart, in his evidence, stated that because this was a country hotel it was difficult to eject patrons when there were no other means of transportation. He confirmed that there was no taxi service available in Westport. Mr. Stewart stated that when a patron might have too much to drink, it would be suggested that he sit in the lobby of the hotel rather than being ejected from the premises with no place to go. The Tribunal accepts the explanation of the witnesses for the licensee and finds that the incidents of May 7 and May 8 were not sufficient to justify the Board's suspension.

Neither the licensee nor its officers or employees were convicted of any offence arising out of any of the incidents which occurred and were set out in the Notice of Proposal. The Officers of the licensee were only really aware of the two incidents on May 7 and May 8 and possibly aware of the incident on Carnival Day involving Kevin Kerr and the pitcher of beer. There is no direct evidence of any kind to connect the other incidents as being a breach of the law on the part of the licensee. There is an onus upon the Board to provide some direct connection between events occurring away from licenced premises and the failure of a licensee to operate its business in accordance with law.

The Liquor Licence Appeal Tribunal revokes the Board's order of suspension of August 5, 1982, with respect to the said licence No. 010700.

448124 ONTARIO LIMITED
[LICENSEE OF WEDNESDAY'S CHILD RESTAURANT]

APPEAL FROM AN ORDER OF THE LIQUOR LICENCE BOARD

TO SUSPEND A DINING LOUNGE LICENCE ISSUED TO 448124 ONTARIO LIMITED

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA SHAND, MEMBER
GALE McAULEY, MEMBER

COUNSEL: DAVID CONRAD, representing the Applicant

S. A. GRANNUM, representing the Liquor Licence Board

HEARING DATE: November 20, 1981

REASONS FOR DECISION AND ORDER

The Licensee is a corporation known as 448124 Ontario Limited and is the holder of a Dining Lounge Licence No. 022024 for the establishment named Wednesday's Child Restaurant, 132 Queen's Quay, East, Toronto, Ontario. The Licenceholder acquired the licensed premises in December 1980, and the officers and directors of the licensee corporation are:

George Chronopoulos - President
Socrartis Stentisiotis - Secretary-Treasurer

The Licensed premises consist of two areas on the second floor of a two-storey building having capacities of 178 and 109 persons.

On July 29th, 1981, the Liquor Licence Board issued a Notice of Proposal "to suspend for a period of seven (7) days the Dining Lounge Licence of the Licenceholder because the past conduct of the officers and directors of the licensee corporation affords reasonable grounds for belief that its business has not been and will not be carried on in accordance with law in that on Sunday, December 14th, 1980 at approximately 2:40 a.m. there were in the licensed premises consuming wine six (6) persons, and the wine had been served to them by George Chronopoulos, an officer of the licensee corporation. The said officer of the corporation had, contrary to Section 6 (20) of the Regulations under the Act, failed to remove all evidence of the service and consumption of liquor within one-half hour after the sale and service of liquor must cease in licensed premises."

At a Hearing held before the Liquor Licence Board on September 3rd, 1981, to consider its proposal, it was noted that the Licenceholder, having requested a Hearing, did not appear although proper notice of the Hearing had been given. In support of the Board's position the necessary evidence was given and the following Decision was issued:

> "In view of the non-appearance of Mr. George Chronopoulos, President of the licensee corporation, at the proceedings scheduled for this date the Board ordered that the aforesaid 'Proposal' be carried out, and the 'Dining Lounge' Licence issued to 448124 Ontario Limited, in respect of Wednesday's Child Restaurant, be "Suspended" for a period of seven (7) business days effective at the opening hour on Monday, September 21, 1981, and to continue in effect until the opening hour on Tuesday, September 29, 1981."

As a result of this Decision the Licensee requested a Hearing before the Tribunal.

At the Tribunal Hearing Constable David Fawcett of The Metropolitan Toronto Police Force gave evidence that on Sunday, December 14th, 1980, at approximately 2:20 a.m., accompanied by Constable John Burgess, he approached the establishment, having noted that, due to the traffic and cars in the vicinity, it appeared to be still in full operation. Constable Fawcett and his partner were met by two men, one of whom, Aires Chronopoulos, identified himself as the owner. The Constable observed that in his opinion this person was very intoxicated, and also observed at the time that there were six or seven people in the establishment drinking wine, and there were many wine glasses still on the tables. In response to Constable Fawcett's caution that all evidence of the service and consumption of liquor should have been removed within one half hour after the sale and service of liquor had ceased, Mr. Chronopoulos stated that 'Sargeant Parke of No. 52 Division said it was O.K.'. The officer was then taken on a tour of the premises and upon returning approximately two minutes later found that all the tables had been cleared and the people who were present had left. The following day Constable Fawcett returned to the establishment and served Aires Chronopoulos with a Provincial Court Summons for failing to clear signs of sale and service of alcoholic beverages in the time prescribed in Section 6 (20) of the Regulations to the Liquor Licence Act. After several remands, on June 12th, 1981, Aires Chronopoulos was convicted in absentia, was fined $100.00, and the Certificate of Conviction appears in the record of the Board proceedings, being Exhibit 4.

In rebuttal, the Licensee's Counsel, Mr. Conrad, examined three witnesses, including the majority shareholder of the licensee corporation, Mr. George Chronopoulos, the head waiter, Mr. Larry Kohut, and the Manager of the establishment's discotheque, Miss Donna James. Mr. Kohut maintained that on the day in question the serving of alcoholic beverages had ceased before the 1:00 a.m. closing. The six persons still at the table, being the last hangers-on of a very busy night, were drinking either soft drinks or Angostura Bitters and soda (usualy used for upset stomachs), and if any wine was served or consumed after hours he would have known about it and stopped it. In her evidence, Miss James also confirmed the above assertion that no wine had been served after hours. Mr. Chronopoulos was acting as Chef in the kitchen most of the evening in question, and although his function was to close the bar, which he maintains he did before 1:00 a.m., he was otherwise too busy to observe or have knowledge of the evidence described above. Furthermore he asserted that his brother, Aires Chronopoulos, had no function in the establishment's operation, and was merely temporarily helping out.

In summation, the Board's Solicitor's contention was that, from the evidence given by Police Constable Fawcett, both at the Board and Tribunal Hearings, the reasonable inference to be made is that, contrary to Section 6 (20) of the Regulations, 'all evidence of the service and consumption of liquor' had not been removed, and that a breach of the Regulations had taken place, i.e. wine and wine glasses were on the tables at 2:40 a.m. and the consumption of wine was still taking place. As to the evidence of proof, he referred the Tribunal to the case of Re: Bernstein & College of Physicians' & Surgeons of Ontario, 1977, 15 O.R. 2nd Series at Page 470, being a Decision of the Divisional Court of The High Court of Justice where Mr. Justice O'Leary made the following observations -

> "The important thing to remember is that in Civil Cases there is no precise formula as to the standard of proof required to establish a fact ---. In all cases, before reaching a conclusion of fact, the Tribunal must be reasonably satisfied that the fact occurred, and whether the Tribunal is so satisfied will depend on the totality of the circumstances, including the nature and consequences of the fact or facts to be proved, the seriousness of the allegation made, and the gravity of the consequences that will flow from a particular finding."

In summarizing the evidence, Mr. Grannum submitted that the police constable observed wine in glasses being consumed, and although he did not pick up or take a sample, no evidence was given to rebutt the reasonable inference that a breach of the Regulations had occurred.

Mr. Conrad, Counsel for the Licensee, based his submission mainly on the fact, as he put it, that Police Constable Fawcett only assumed but did not know that the glasses on the tables contained wine, and did not smell or taste the contents nor take away any evidence of same. Furthermore he contended that from the evidence given the glasses could conceivably have contained liquids other than alcoholic beverages.

Having considered the evidence given on behalf of both the Board and the Licensee and also the above submissions of Counsel, the Tribunal is satisfied in accordance with the criterion set out above and finds as a fact that glasses containing wine were on the tables in this establishment at 2:20 a.m. on December 14th, 1980, i.e. one hour and twenty minutes following the cessation of the sale and service of liquor at 1:00 a.m. and accordingly the Licenceholder was in breach of Section 6 (20) of the Regulations.

Counsel for the Licensee has stressed the consequences of the penalty with respect to the financial effect on the establishment's operation, and the Tribunal is of the opinion that any Licensee must continually be aware that any breach of a Regulation may lead to a suspension, and that suspension may lead to such consequences. In the ordinary course of the administration of the Liquor Licence Act the Tribunal is loath to interfere with a penalty imposed by the Board.

Accordingly, the Liquor Licence Appeal Tribunal hereby confirms the Decision of the Liquor Licence Board dated the 3rd day of September, 1981, to suspend the Dining Lounge Licence for a period of seven (7) business days, and the Tribunal hereby directs the Board to set the commencement and termination of the said period.